

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SENTIUS INTERNATIONAL, LLC, ) C-13-00825 PSG  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) JANUARY 8, 2014  
)  
MICROSOFT CORPORATION, ) PAGES 1-139  
)  
DEFENDANT. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE PAUL S. GREWAL  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: SUSMAN GODFREY  
BY: MAX L. TIBBLE  
SANDEEP SETH  
VINEET BHATIA  
1000 LOUISIANA STREET, SUITE 5100  
HOUSTON, TEXAS 77002

FOR THE DEFENDANT: FISH & RICHARDSON  
BY: JONATHAN J. LAMBERSON  
500 ARGUELLO STREET, SUITE 500  
REDWOOD CITY, CALIFORNIA 94063

ALSO PRESENT: MARK BOOKMAN  
ISABELLA FU

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

JANUARY 8, 2014

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:44 A.M.)

4 THE COURT: MR. RIVERA, WOULD YOU PLEASE CALL THE  
5 MATTER THAT'S BEEN SPECIALLY SET?

6 THE CLERK: YES, YOUR HONOR.

7 CALLING SENTIUS INTERNATIONAL, LLC VERSUS MICROSOFT  
8 CORPORATION, CASE NUMBER CV-13-825 PSG, MATTER ON FOR TUTORIAL  
9 AND CLAIM CONSTRUCTION.

10 COUNSEL, PLEASE STATE YOUR APPEARANCES.

11 MR. TRIBBLE: YOUR HONOR, MAX TRIBBLE FOR THE  
12 PLAINTIFF SENTIUS. WITH ME IS MY CO-COUNSEL, SANDEEP SETH.

13 THE COURT: MR. TRIBBLE, GOOD MORNING. AND GOOD  
14 MORNING TO YOUR TEAM AS WELL.

15 MR. TRIBBLE: AND MY PARTNER, VINEET BHATIA, WILL BE  
16 HERE. HE THOUGHT WE STARTED AT 10:00, BUT WE'RE READY TO GO  
17 EARLY, BUT HE MAY COME IN.

18 THE COURT: I LOOK FORWARD TO SEEING HIM.

19 AND I WILL ALSO SAY I APPRECIATE EVERYONE'S WILLINGNESS TO  
20 START EARLY. IT CERTAINLY HELPS ME. THANK YOU.

21 COUNSEL.

22 MR. LAMBERSON: GOOD MORNING, YOUR HONOR.  
23 JONATHAN LAMBERSON, FISH & RICHARDSON, FOR MICROSOFT  
24 CORPORATION.

25 THE COURT: MR. LAMBERSON, GOOD MORNING.

1 MR. LAMBERSON: ALSO HERE IS MS. ISABELLA FU,  
2 ASSOCIATE COUNSEL FOR MICROSOFT.

3 THE COURT: GOOD MORNING TO YOU AS WELL, MS. FU.  
4 ALL RIGHT.

5 MR. TRIBBLE: YOUR HONOR, PARDON ME. I SHOULD ALSO  
6 SAY THAT MR. MARK BOOKMAN IS HERE TODAY.

7 THE COURT: GOOD MORNING, MR. BOOKMAN.

8 MR. TRIBBLE: HE'S THE CEO OF SENTIUS AND THE MAIN  
9 INVENTOR ON THE PATENTS.

10 THE COURT: WELCOME TO YOU AS WELL, SIR.

11 ALL RIGHT. WELL, I THINK WE ALL UNDERSTAND WHY WE'RE  
12 HERE, WHICH IS OF COURSE FOR THE TUTORIAL AND CLAIM  
13 CONSTRUCTION.

14 I WANT TO JUST BEGIN, IF I COULD, BY SAYING I APPRECIATE  
15 THE BRIEFING AND THE MATERIALS THAT WERE SUBMITTED IN ADVANCE.  
16 I FOUND THEM EXTREMELY HELPFUL OVER THE LAST FEW DAYS IN  
17 PREPARING.

18 I WOULD CERTAINLY BENEFIT FROM SOME BROADER DISCUSSION OF  
19 THE BACKGROUND TECHNOLOGY BEFORE WE GET INTO THE NITTY GRITTY  
20 OF THIS COLUMN AND THIS LINE AND SO ON AND SO FORTH.

21 HAVING SAID THAT, I'M CERTAINLY OPEN TO HOWEVER YOU ALL  
22 WISH TO STRUCTURE THIS EXERCISE.

23 I HAVE CLEARED AS MUCH OF THE DAY AS WE NEED, SO TIME  
24 WON'T BE A PROBLEM FROM MY PERSPECTIVE, BUT I'M REALLY HAPPY TO  
25 TAKE MY LEAVE FROM YOU ALL IN TERMS OF HOW YOU WANT TO PROCEED.

1 I WOULD SUGGEST, WHEN WE GET TO THE CLAIM TERMS, THAT IT  
2 WOULD BE MOST EFFICIENT FOR ME TO TAKE EACH TERM UP ONE BY ONE,  
3 AND IN THE ABSENCE OF ANY DISAGREEMENT BETWEEN THE PARTIES, I  
4 NORMALLY FIND IT HELPFUL TO WORK THROUGH THE TERMS IN THE ORDER  
5 IN WHICH THEY'RE ADDRESSED IN THE BRIEFS.

6 WITH THAT, MR. TRIBBLE OR MR. LAMBERSON, I DON'T KNOW IF  
7 YOU HAVE ANY THOUGHTS ABOUT HOW TO PROCEED.

8 MR. TRIBBLE: I THINK WE BOTH AGREE WITH THAT  
9 APPROACH, YOUR HONOR.

10 MR. LAMBERSON: YES.

11 THE COURT: OKAY. DOES THAT WORK? THEN LET'S GET AT  
12 IT.

13 MR. TRIBBLE: NOW, AS TO THE TUTORIAL, WE  
14 SUBMITTED --

15 THE COURT: I HAVE IT, AND I HAVE REVIEWED IT.

16 MR. TRIBBLE: SO I GUESS I'M A LITTLE BIT, EXCUSE ME,  
17 AT A LOSS. I MEAN, DID YOU HAVE QUESTIONS OR DO YOU WANT TO GO  
18 OVER IT AGAIN?

19 THE COURT: WELL, I CERTAINLY DON'T NEED YOU TO MARCH  
20 ME THROUGH THE MATERIALS YOU'VE SUBMITTED. I'VE GOT THEM AND I  
21 APPRECIATE THEM.

22 I DID HAVE A COUPLE OF BIGGER PICTURE QUESTIONS, IF I  
23 COULD, AND IF THESE ARE ISSUES THAT ARE MOST EFFICIENTLY  
24 ADDRESSED GOING THROUGH THE TERMS ONE BY ONE, WE CAN DO THAT.

25 MR. TRIBBLE: I THINK IT WOULD BE.

1 THE COURT: OKAY.

2 MR. TRIBBLE: I DON'T --

3 MR. LAMBERSON: I MEAN, IF THERE ARE SPECIFIC ISSUES,  
4 YOUR HONOR, THAT YOU WANTED US TO ADDRESS FIRST, I THINK THAT  
5 MAKES SENSE.

6 THE COURT: WHY DON'T WE JUST MARCH THROUGH THE  
7 TERMS? I'M SURE I'LL HAVE PLENTY OF OPPORTUNITIES TO ADDRESS  
8 THEM IN THAT CONTEXT.

9 MR. TRIBBLE: OKAY. LET'S GO AHEAD AND MARCH RIGHT  
10 THROUGH IT.

11 YOUR HONOR, THE FIRST TERM IS "DATABASE," AND WHAT WE'VE  
12 DONE IN THIS TABLE IS WE'VE SET OUT THE TWO PROPOSED  
13 CONSTRUCTIONS, AND WE'VE HIGHLIGHTED THE PART OF THE MICROSOFT  
14 CONSTRUCTION THAT WE FIND OBJECTIONABLE.

15 SENTIUS PROPOSES THAT A DATABASE IS SIMPLY "A COLLECTION  
16 OF DATA WITH A GIVEN STRUCTURE FOR ACCEPTING, STORING AND  
17 PROVIDING, ON DEMAND, DATA FOR AT LEAST ONE USER," AND I'LL  
18 TELL YOU WHERE THAT CONSTRUCTION CAME FROM IN A SECOND.

19 MICROSOFT'S CONSTRUCTION IS -- IT'S MUCH LONGER AND  
20 NARROWER. IT REQUIRES RECORDS AND FIELDS WHICH, OF COURSE,  
21 WOULD BE TERMS THAT ARE UNDEFINED FOR THE JURY, AND THEN IT  
22 GIVES AN EXAMPLE THAT EVEN NARROWS IT BEYOND WHAT JUST THE  
23 FIRST SENTENCE WOULD MEAN, AND WE'LL COME BACK TO THAT A LITTLE  
24 LATER.

25 SENTIUS' CONSTRUCTION COMES FROM JUDGE ARMSTRONG'S

1 ADOPTION IN THE FLYSWAT CASE OF THE TWO PARTIES' AGREED  
2 CONSTRUCTION.

3 THE COURT: UM-HUM.

4 MR. TRIBBLE: IT'S NOT DISPOSITIVE, OF COURSE. IT IS  
5 INFORMATIVE FOR THE COURT THAT JUDGE ARMSTRONG DID ADOPT THIS,  
6 AND IT'S INFORMATIVE THAT THE TWO COMPETING PARTIES IN THAT  
7 CASE BOTH AGREED TO THIS CONSTRUCTION.

8 THE COURT: YEAH. THERE WAS NO DEBATE IN THAT CASE,  
9 RIGHT?

10 MR. TRIBBLE: THAT'S CORRECT.

11 THE COURT: THIS WAS SUBMITTED.

12 MR. TRIBBLE: YES. AND SO IT'S NOT DISPOSITIVE, BUT  
13 IT IS INFORMATIVE.

14 WE'VE PUT FORWARD IN OUR BRIEFING DICTIONARY DEFINITIONS.  
15 THIS IS THE 1994 IBM DICTIONARY OF COMPUTING, "A COLLECTION OF  
16 DATA WITH A GIVEN STRUCTURE." YOU CAN SEE IT'S FAIRLY SIMILAR,  
17 ALMOST IDENTICAL.

18 AND SIMILARLY, THE IEEE DEFINITION IS CONSISTENT WITH THIS  
19 CONSTRUCTION, JUST "A COLLECTION OF LOGICALLY RELATED DATA  
20 STORED TOGETHER."

21 NOW, WE CITED OTHER COURT'S CONSTRUCTIONS OF THE TERM  
22 "DATABASE," AND THEY'RE SIMILARLY -- THEY'RE VERY SIMILAR, "A  
23 COLLECTION OF DATA WITH A GIVEN STRUCTURE," "A STRUCTURED SET  
24 OF DATA," "A STRUCTURED SET OF DATA HELD IN A COMPUTER."

25 CLEARLY SITTING IN THE ABSTRACT, THE TERM "DATABASE," IT'S

1 A VERY BROAD TERM. THERE ARE DIFFERENT KINDS OF DATABASES.

2 AND SO TO ME THE QUESTION AT THE END OF THE DAY IS, HAS  
3 SENTIUS DONE SOMETHING IN THE SPEC, OR THE PROSECUTION HISTORY,  
4 THAT CONSTITUTES A CLEAR DISAVOWAL OF THE FULL SCOPE OF  
5 COVERAGE OF THIS CLAIM TERM?

6 AND WE SUBMIT THAT WE HAVEN'T.

7 AND SO -- AND IN FACT, ALONG THOSE LINES, MICROSOFT, THEY  
8 CITE A COURT'S DEFINITION FROM THE FEDERAL CIRCUIT WHERE THEY  
9 GAVE AN EXTREMELY NARROW DEFINITION OF, I THINK IT WAS  
10 "ELECTRONIC DATABASE."

11 BUT THE POINT ABOUT FINISAR IS THAT INVENTION WAS ABOUT  
12 SERVING UP ALL KINDS OF MEDIA AND IT REQUIRED THAT IT BE A  
13 RELATIONAL DATABASE WITH INDICES INDEXING THE DATA EVERY WHICH  
14 WAY SO IT WOULD BE ABLE TO ACCESS AND SERVE UP ALL OF THE DATA.  
15 IT WAS THE ESSENCE OF THE INVENTION.

16 THAT NARROWING TYPE OF FEATURE IS JUST NOT PRESENT IN THE  
17 SENTIUS PATENT AND FILE HISTORY.

18 THE COURT: SO I TAKE IT WHAT YOU'RE SAYING ON THIS  
19 POINT, MR. TRIBBLE, IS CERTAINLY A RELATIONAL DATABASE COULD  
20 QUALIFY AS THAT TERM HAS BEEN USED IN THIS PATENT, BUT IT'S NOT  
21 THE ONLY WAY IN WHICH THE DATA CAN BE STRUCTURED OR ARRANGED AS  
22 DISCLOSED?

23 MR. TRIBBLE: THAT'S EXACTLY RIGHT, YOUR HONOR.

24 AND SO -- IN FACT, YOU'RE ONE STEP AHEAD OF ME, SO LET'S  
25 LOOK AT FIGURE 1 IN THE '731.

1           AND SO YOU'LL SEE -- LET'S SEE IF I HAVE A POINTER. SO  
2           YOU'LL SEE -- LET'S WALK THROUGH THIS. THE INVENTION STARTS  
3           WITH A TEXT FILE OR A SYNCHRONIZED AUDIO/VISUAL TEXT FILE,  
4           OKAY? AND SO CLEARLY THE SYNCHRONIZED AUDIO/VISUAL TEXT  
5           FILE -- I SUPPOSE SINCE IT'S SYNCHRONIZED, YOU HAVE TEXT  
6           SYNCHRONIZED WITH THE AUDIO/VISUAL. THERE'S SOME KIND OF, YOU  
7           KNOW, DATABASE THERE THAT KEEPS TRACK OF THAT SYNCHRONIZATION.

8           BUT IT ALSO -- THE PREFERRED EMBODIMENT TALKS ABOUT JUST  
9           IMPORTING A TEXT FILE. IT SHOWS A JAPANESE TEXT FILE. THAT'S  
10          WHAT GOES IN ON THE FRONT END.

11          AND THE DISPUTE IS -- THIS IS AN ODD CASE. I'VE NEVER  
12          SEEN A CASE BEFORE WHERE THE DEFENDANT'S BRIEFING -- YOU KNOW,  
13          IT'S ALL BLACK LETTER LAW THAT YOU DON'T CONSTRUE THE CLAIMS IN  
14          LIGHT OF THE ACCUSED PRODUCTS.

15          BUT MOST OF THE BRIEFING AND PRESENTATION OF MICROSOFT IS  
16          BASICALLY COMPARING MICROSOFT WORD AND SAYING, "WELL, WE'RE  
17          DIFFERENT." AND IT'S JUST -- I THINK IT'S NOT SOMETHING THAT  
18          SHOULD BE CONSIDERED IN CLAIM CONSTRUCTION.

19          AT ANY RATE, JUST TO WALK YOU THROUGH IT, LET'S TAKE THE  
20          CASE OF A TEXT FILE. IT GOES TO THE VISUAL EDITOR, ITEM 19,  
21          AND THE VISUAL EDITOR CUTS THE WORDS IN THE TEXT FILE INTO  
22          EITHER GROUPS OF SINGLE WORDS AND/OR PHRASES, GROUPS OF WORDS.

23                 THE COURT: THAT'S THE PARSING WE'RE GOING TO TALK  
24                 ABOUT IN A LITTLE BIT?

25                 MR. TRIBBLE: CORRECT.



1 THE COURT: OKAY.

2 MR. TRIBBLE: BUT IT'S REFERRED TO AS CUTTING IN THE  
3 PATENT, AND I'LL SHOW YOU THIS.

4 BUT THE RESULT COMING OUT OF THAT CUTTING PROCESS IS THE  
5 WORDIFIED DATABASE, WHICH IS HIGHLIGHTED THERE, ITEM 20. SO  
6 THERE'S A WORDIFIED DATABASE, WHICH IS JUST THE TEXT FILE CUT  
7 UP.

8 ON THE OTHER HAND, THERE'S A RELATIONAL DATABASE, 15, THAT  
9 HAS ALL THE LINKABLE OUTSIDE RESOURCE MATERIALS THAT CAN BE  
10 LINKED TO THIS, AND WE'LL GET TO THIS IN A SECOND, BUT  
11 EVENTUALLY IT GOES DOWN TO THIS LINKAGE AND ALL THIS, AND IT'S  
12 DOWN HERE WHERE IT CREATES ITEM 35, WHICH IS THE LOOK-UP TABLE.  
13 THAT'S ANOTHER -- IT CALLS IT A LOOK-UP TABLE, BUT OBVIOUSLY  
14 THAT IS A TABLE -- THAT IS A DATABASE AS WELL.

15 THE COURT: UM-HUM.

16 MR. TRIBBLE: AND I THINK THE ESSENCE OF THE DISPUTE  
17 IS THAT MICROSOFT IN ITS BRIEFING, THEY SEEM TO SAY THAT WHAT  
18 WE'RE DISCLOSING AND TALKING ABOUT IS A TABLE FORMAT AND NO ONE  
19 WOULD EVER THINK OF A MICROSOFT WORD DOCUMENT AS A TABLE. I  
20 MEAN, THAT'S BASICALLY THEIR ARGUMENT, COMPARING IT TO THE  
21 ACCUSED PRODUCT.

22 AND THE FACT OF THE MATTER IS THERE ARE MANY DATABASES  
23 DISCLOSED.

24 AND THEN THE IRONY OF IT IS THAT THIS TEXT FILE THAT  
25 THEY'RE COMPLAINING ABOUT, AT THE END OF THE DAY, AT THE END OF

1 THEIR BRIEF, THEY ADMIT THAT A TEXT FILE CAN BE A DATABASE,  
2 WHICH SEEMS TO CONTRADICT THEIR EARLIER BRIEFING.

3 BUT AT ANY RATE, THE -- THEY HAVE TO ADMIT THAT IN LIGHT  
4 OF THE DEPENDENT CLAIMS, BUT ALSO IN LIGHT OF THE FACT THAT THE  
5 PREFERRED EMBODIMENT IS A TEXT FILE, IT'S A JAPANESE TEXT FILE  
6 THAT'S GOING IN.

7 AND SO THEIR CONSTRUCTION, IF IT MEANS WHAT THEY SAY,  
8 WOULD EXCLUDE THE PREFERRED EMBODIMENT WHICH, UNDER VITRONICS,  
9 IS RARELY CORRECT.

10 SO HERE'S THE SECTION IN THE SPEC IN COLUMN 7 THAT  
11 DESCRIBES THE CUTTING PROCESS AND THE LINKING PROCESS.

12 AND SO THIS DESCRIBES HOW THE VISUAL EDITOR TAKES THE TEXT  
13 FILE AND MAKES THE CUTS RESULTING IN THE WORDIFIED DATABASE,  
14 AND IT SAYS YOU POINT AND CLICK, DIVIDE THE TEXT INTO  
15 INDIVIDUAL COMPONENTS OF TEXT THAT ARE LINKED WITH THE  
16 ADDITIONAL REFERENCE MATERIAL.

17 THOSE PIECES ARE GOING TO BE LINKED, BUT THEY'RE NOT  
18 LINKED AT THIS STAGE. THEY'RE NOT LINKED BY THE VISUAL EDITOR.  
19 THAT OCCURS THROUGH THE LINK ENGINE IN THE SUBSEQUENT PROCESS.

20 THE COURT: SO IT'S ACTUALLY SEVERAL STEPS FURTHER  
21 DOWN THE LINE?

22 MR. TRIBBLE: THAT'S CORRECT.

23 AND THE ORIGINAL TEXT IS PROVIDED BY A PUBLISHER IN ASCII  
24 FORMAT OR SOME OTHER FORMAT, AND THEN THE TEXT IS DIVIDED UP  
25 INTO COMPONENT WORDS OR PHRASES IN PREPARATION FOR THE NEXT

1 STEP.

2 SO NOW LET'S GO TO THE NEXT STEP.

3 WE HAVE THE LINKING PROCESS. THE LINKING PROCESS,  
4 ACCORDING TO THE SPECIFICATION, TAKES THE TEXT AFTER THE WORD  
5 CUT PROCESS AND LINKS IT TO AN EXTERNAL RESOURCE. SO THIS IS  
6 WHERE THE LINKS ARE BEING CREATED.

7 THE DATABASE 20, WHICH IS THE WORDIFIED DATABASE, SOURCES  
8 A GRAMMAR PARSER AND A LINK ENGINE THAT BUILDS AN INDEX WHICH  
9 IN TURN LOCATES EACH REFERENCE IN THE SOURCE MATERIAL.

10 AND IN THE CASE OF LANGUAGE LEARNING, IT GOES ON.

11 AT ANY RATE, HERE IS WHERE THE LINKING PROCESS IS  
12 BEGINNING, AND SO THAT IS AFTER THE CREATION OF THE WORDIFIED  
13 DATABASE, SO THERE'S ANOTHER DATABASE THAT -- I THINK THAT  
14 MICROSOFT WOULD LEAVE THE IMPRESSION THAT THE ONLY THING THAT  
15 COULD BE A DATABASE IS SOMETHING WHICH IS A TABLE FORMAT WHERE  
16 YOU HAVE, HERE'S THE PIECE AND HERE'S THE LINK, AND THAT'S THE  
17 LOOK-UP TABLE.

18 WE HAVE A LOOK-UP TABLE. THAT'S AT THE BOTTOM LEFT OF  
19 FIGURE 31, ITEM 35.

20 BUT I JUST WANT TO POINT OUT THERE ARE MANY DATABASES IN  
21 HERE. THE TEXT FILE, AS MICROSOFT ADMITS, CAN BE A DATABASE.  
22 AND THEY HAVE TO ADMIT THIS, NOT ONLY BECAUSE OF THE PREFERRED  
23 EMBODIMENT, BUT WE HAVE THESE DEPENDENT CLAIMS, AND IT MAKES  
24 CLEAR, THE ELECTRONIC DATABASE CAN BE A RELATIONAL DATABASE OR  
25 IT COULD BE SOME OTHER TYPE OF FILE, INCLUDING AN ELECTRONIC

1 TEXT.

2 OKAY. AND "ELECTRONIC" IN THE CONTEXT OF THIS, THEY'RE  
3 TALKING ABOUT ELECTRONIC, STORED IN MEMORY, STORED  
4 MAGNETICALLY.

5 THE COURT: BUT IN ANY EVENT, HOWEVER IT'S STORED --  
6 I'M SORRY, WOULD YOU GO BACK TO SLIDE 11 -- WHAT THIS SHOWS  
7 BETWEEN THE TEXT FROM COLUMN 7 AND THE FIGURE WHICH YOU'VE  
8 HIGHLIGHTED ON THE LEFT-HAND SIDE IS THAT WELL BEFORE WE GET TO  
9 THE POINT WHERE THERE IS A RELATION ESTABLISHED WITH LINKS,  
10 THERE ARE DATABASES.

11 MR. TRIBBLE: CORRECT. THAT'S CORRECT, YOUR HONOR.  
12 THAT'S MY POINT. THANK YOU.

13 AND THEN HERE WE JUST CITED THE PART OF THE MICROSOFT  
14 BRIEF WHERE THEY MAKE CLEAR THAT A TEXT FILE CAN BE A DATABASE  
15 UNDER THEIR PROPOSED CONSTRUCTION, THEY SAY SO LONG AS IT IS  
16 ORGANIZED USING FIELDS AND RECORDS.

17 AND IT'S JUST -- AGAIN, IF WE HAD THE PROPER CONSTRUCTION  
18 OF FIELDS AND RECORDS, MAYBE THAT WOULD BE OKAY.

19 WE JUST THINK IT'S CONFUSING AND UNNECESSARY IN THIS CASE  
20 TO GO INTO THAT LEVEL OF DETAIL.

21 WHAT THEY CITE IN THEIR FOOTNOTE 6 FOR THE STATEMENT THAT  
22 THEIR CONSTRUCTION, TO BE FILLED DIRECTLY, IS THEY CITE A  
23 DOCUMENT THAT WE HAD FOUND WHERE IT SAYS, ACCORDING TO THIS  
24 PERSON, THE SIMPLEST POSSIBLE DATABASE CONSISTS OF AN  
25 UNFORMATTED TEXT FILE IN WHICH EACH LINE CORRESPONDS TO A

1 RECORD, AND THEN THE SEPARATED PIECES OF IT ARE THE FIELDS.

2 AND SO A TEXT FILE, YOU KNOW, COULD BE A DATABASE.

3 AND SO, YOU KNOW, JUST GOING BACK TO IT, THE DEPENDENT  
4 CLAIM, THE DESCRIPTION OF THE CUTTING PROCESS, THE CREATION OF  
5 THE WORDIFIED DATABASE ALL MAKE CLEAR THAT THE TERM WAS USED  
6 BROADLY AND GENERICALLY. THERE'S NOTHING TO INDICATE THAT WE  
7 HAVE MADE A CLEAR DISAVOWAL OF THE FULL SCOPE OF CLAIM  
8 COVERAGE.

9 THANK YOU, YOUR HONOR.

10 THE COURT: THANK YOU, MR. TRIBBLE.

11 MR. LAMBERSON.

12 MR. LAMBERSON: GOOD MORNING, YOUR HONOR.

13 THE COURT: GOOD MORNING AGAIN.

14 MR. LAMBERSON: LET ME SEE IF MY CLICKER WILL WORK.

15 IT WILL.

16 THE KEY DISPUTE HERE, YOUR HONOR, THE KEY OBJECTION WE  
17 HAVE TO SENTIUS' CONSTRUCTION IS THAT IT'S JUST INCREDIBLY  
18 BROAD TO THE POINT OF BEING OVERBROAD AND INDEFINITE.

19 IF YOU LOOK AT SENTIUS' CONSTRUCTION -- I THINK WE ALL  
20 AGREE THAT A DATABASE IS A STRUCTURE. IT'S A STRUCTURE.

21 AND YET, SENTIUS DOESN'T SAY WHAT THAT STRUCTURE IS. IT  
22 SAYS IT'S A COLLECTION OF DATA WITH A GIVEN STRUCTURE.

23 WELL, WHAT IS THAT STRUCTURE? IT JUST BEGS THE QUESTION.

24 AND IN FACT, WE CAN SEE THE BREADTH OF THAT WHEN WE LOOK  
25 AT SENTIUS' CONTENTIONS. WHAT WE SEE THEY'RE ACCUSING IS A

1 WORD DOCUMENT IN MEMORY AS BEING A DATABASE; THEY'RE ACCUSING  
2 AN OUTLOOK E-MAIL AS BEING A DATABASE; THEY'RE ACCUSING A  
3 POWERPOINT SLIDE AS BEING A DATABASE; THEY'RE ACCUSING A ONE  
4 NOTE FILE AS BEING A DATABASE. ONE NOTE IS BASED ON HTML, I  
5 BELIEVE.

6 SO ALL OF THESE THINGS HAVE A STRUCTURE AND, UNDER  
7 SENTIUS' CONSTRUCTION, THEY'RE SAYING THAT IS A DATABASE.

8 AND FRANKLY, ANY OTHER FILE. I MEAN, EVERY FILE STORED ON  
9 A COMPUTER HAS SOME GIVEN STRUCTURE. EVERY FILE STORES DATA  
10 AND CAN RETRIEVE DATA. SO UNDER SENTIUS' CONSTRUCTION, WE JUST  
11 DON'T KNOW WHERE TO DRAW THE LINES, WHAT IS A DATABASE AND WHAT  
12 IS NOT.

13 SO WHAT WE'VE TRIED TO DO, YOUR HONOR, IS LOOK TO THE  
14 INTRINSIC RECORD AND SEE WHAT DOES THE INTRINSIC RECORD  
15 DISCLOSE AS SORT OF THE BASELINE FOUNDATIONAL STRUCTURE FOR A  
16 DATABASE.

17 AND I JUST WANT TO CLARIFY, YOUR HONOR. WE'RE NOT SAYING  
18 IT HAS TO BE RELATIONAL. WE'RE NOT SAYING THERE HAS TO BE  
19 TABLES. THAT IS NOT OUR CONSTRUCTION.

20 OUR CONSTRUCTION IS RECORDS AND FIELDS AS SORT OF THE  
21 FOUNDATIONAL STRUCTURE FOR A DATABASE FORMAT.

22 NOW --

23 THE COURT: MR. LAMBERSON, ON THAT POINT, LET ME MAKE  
24 SURE I APPRECIATE WHAT YOU'RE SAYING. YOU'RE SAYING THAT YOU  
25 CAN HAVE RECORDS AND FIELDS TO STRUCTURE DATA WITHOUT THERE

1           NECESSARILY BEING A TABLE, WITHOUT THERE NECESSARILY BEING A  
2           RELATIONAL DATABASE?

3                   MR. LAMBERSON:   ABSOLUTELY, YOUR HONOR.

4                   AND SORT OF THE SIMPLEST EXAMPLE THAT WE'VE TALKED ABOUT,  
5           IT COULD POTENTIALLY BE A TEXT FILE WHERE YOU HAVE DELIMITED  
6           TEXT, AND WE'LL GET TO THIS IN A SECOND.

7                   BUT THAT IS THE POINT, YOUR HONOR.   YOU DON'T HAVE TO  
8           HAVE -- RELATIONAL USUALLY CONNOTES MULTIPLE TABLES WHERE YOU  
9           HAVE THIS FIELD RELATES TO THIS FIELD.

10                  NOT REQUIRED.   OUR CONSTRUCTION, YOU COULD HAVE A SINGLE  
11           RECORD WITH A SINGLE FIELD POTENTIALLY.   I SUPPOSE OUR  
12           CONSTRUCTION DOES SAY RECORDS AND FIELDS, SO PERHAPS IT'S  
13           MULTIPLE.

14                  BUT IN ANY EVENT, THE KEY POINT IS RECORDS AND FIELDS --  
15           AND THERE SEEMS TO BE SOME CONFUSION, ON SENTIUS' PART AT  
16           LEAST, AND I'D LIKE TO CLEAR THAT UP.   I THINK IT'S A FAIRLY  
17           STRAIGHTFORWARD CONCEPT.   RECORD IS A SINGLE ENTRY IN THE  
18           DATABASE, IT COULD BE MADE UP OF ONE OR MORE FIELDS; AND A  
19           FIELD IS A SINGLE PIECE OF DATA WITHIN THE RECORD.

20                  OUR CONSTRUCTION WE THINK CLARIFIES THAT -- I'LL GET TO  
21           WHERE WE TOOK THAT FROM IN A MOMENT, IT'S FROM A DICTIONARY  
22           DEFINITION -- AND THAT'S JUST MEANT TO BE ILLUSTRATIVE.

23                  I THINK OUR CONSTRUCTION SAYS "FOR EXAMPLE."   WE'RE JUST  
24           TRYING TO EXPLAIN IT TO THE JURY.   WE'RE NOT TRYING TO SUGGEST  
25           THAT THE RECORD HAS TO LOOK LIKE OUR EXAMPLE.   IT'S JUST AN

1       EXAMPLE.

2               THE COURT:   SO, FOR EXAMPLE, IN YOUR CONSTRUCTION  
3       WHEN YOU SAY "A FIELD WOULD BE THE STREET ADDRESS FIELD,  
4       NAMELY, 12 WEST 21ST STREET," YOU'RE NOT --

5               MR. LAMBERSON:   IT'S JUST AN EXAMPLE.

6               THE COURT:   -- SUGGESTING THAT THAT'S THE ONLY WAY IN  
7       WHICH A FIELD COULD BE SET OUT?

8               MR. LAMBERSON:   ABSOLUTELY RIGHT.   AND WE COULD  
9       CHANGE IT TO SAY "A FIELD, FOR EXAMPLE, COULD BE" -- IN THIS  
10      EXAMPLE, "A FIELD WOULD BE" MAY BE A BETTER MAY TO SAY IT.   BUT  
11      WE'RE JUST TRYING TO PROVIDE AN EXAMPLE OF RECORDS AND FIELDS.

12              AND LET ME GET TO THE INTRINSIC RECORD BECAUSE THAT REALLY  
13      IS WHERE WE DRAW THIS FROM.   THIS IS NOT SOMETHING WE'RE MAKING  
14      UP OBVIOUSLY, OR PULLING FROM DICTIONARY DEFINITIONS.

15              THIS IS THE '985 PATENT -- AND JUST TO CLARIFY AT THE  
16      START HERE, THE '985 AND THE '349 HAVE THE SAME SPECIFICATION,  
17      THEY'RE ONE FAMILY, SO IN OUR SLIDES WE'VE ONLY CITED TO THE  
18      '985, BUT YOU CAN FIND THE SAME DISCLOSURE IN THE OTHER PATENT.

19              SAME THING FOR THE RE-ISSUED PATENT.   SAME SPECIFICATION,  
20      SO WE'LL CITE TO THE '731 RE-ISSUED PATENT.

21              SO LOOKING AT THE '985 PATENT, WE HAVE HERE A DISCUSSION  
22      ABOUT TWO DATABASES, THE TERM DATABASE, AND THE CUSTOMER'S  
23      DATABASE.   AND THE TERM DATABASE IS WHAT STORES THE TERMS IN  
24      THE PATENT AND IS TALKING ABOUT EACH OF THESE HAVING FIELDS AND  
25      MAPPING BETWEEN THE FIELDS OF THESE DATABASES.   SO VERY TYPICAL



1 DESCRIPTION OF DATABASES AS HAVING FIELDS.

2 AND I THINK IT GETS EVEN MORE CLEAR WHEN YOU LOOK AT THE  
3 '731 PATENT. THIS -- AND IT'S GOING TO TAKE A SECOND FOR ME TO  
4 EXPLAIN THIS, BUT -- AND THIS IS NOT IN THE BRIEFING, BUT IN  
5 PREPARING, I NOTICED THIS DISCLOSURE, COLUMN 11 IS THE KEY  
6 PIECE HERE OF THE '731 PATENT, AND THAT'S WHAT'S SHOWN ON THE  
7 RIGHT OF OUR SLIDE 12.

8 WE'RE TALKING HERE ABOUT THE PERSONAL DICTIONARY WHICH THE  
9 PATENT DESCRIBES AS A RELATIONAL DATABASE. BUT THIS IS THE  
10 DATABASE THAT STORES THE WORDS AND THE PRONUNCIATIONS IN THE  
11 '731 PATENT.

12 AND IN COLUMN 11, IT'S INTERESTING BECAUSE IT'S TALKING  
13 ABOUT HOW YOU IMPORT AND EXPORT DATA FROM THAT DATABASE. SO IF  
14 YOU WANTED TO, YOU KNOW, DUMP THE DATABASE CONTENTS TO WHAT  
15 THEY CALL A TAB DELIMITED FILE, WHICH IS ONE OF THESE FILES  
16 WE'VE BEEN TALKING ABOUT, IT'S ESSENTIALLY A TEXT FILE WHERE  
17 YOU HAVE THE OUTPUT OF THE DATABASE IN A SPECIFIC FORMAT  
18 DELIMITED BY TABS BETWEEN THE FIELDS.

19 AND WHAT THIS IS SHOWING US IN THIS COLUMN 11 IS THE  
20 ACTUAL STRUCTURE OF THE DATABASE. THIS IS WHAT YOU HAVE TO  
21 STRUCTURE YOUR DATA AS TO GET IT INTO THE DATABASE OR WHEN IT  
22 COMES OUT OF THE DATABASE.

23 AND WHAT WE SEE HERE IS THAT IT'S A RECORD STRUCTURE WITH  
24 EIGHT FIELDS. YOU HAVE THE WORD, THE PRONUNCIATION, THE  
25 MEANING -- SO IN OUR EXAMPLE, WE TALK ABOUT THE JAPANESE

1 ECONOMY DEFINITION THAT'S IN THE PATENT. THIS IS WHERE THAT  
2 WOULD BE. THIS IS THE FIELD THAT WOULD STORE THAT MEANING, AND  
3 THE WORD WOULD BE THE KANJI CHARACTER.

4 SO THIS IS A RECORD FIELD STRUCTURE, AND THAT'S WHAT THIS  
5 PATENT IS TALKING ABOUT WHEN IT'S TALKING ABOUT THESE  
6 DATABASES.

7 THE COURT: MR. LAMBERSON, I TEND TO AGREE WITH YOUR  
8 CHARACTERIZATION OF WHAT IS DESCRIBED IN COLUMN 5 AND  
9 COLUMN 11.

10 THE HIGHER LEVEL CONCERN I HAVE IS AT COLUMN 5, LINE 5 OR  
11 SO, THE PATENT PRETTY PLAINLY MAKES CLEAR THAT WHAT IS BEING  
12 DISCUSSED IN COLUMN 5 IS A FIGURE AND THAT THAT FIGURE IS AN  
13 EXEMPLARY EMBODIMENT OF THE INVENTION.

14 SO EVEN IF I ACCEPT EVERYTHING YOU'RE SAYING ABOUT WHAT'S  
15 DISCLOSED HERE, HOW DO I RECONCILE THAT WITH SOME PRETTY CLEAR  
16 LANGUAGE THAT SAYS WE'RE JUST TALKING ABOUT ONE EXAMPLE?

17 MR. LAMBERSON: I AGREE WITH YOU THERE, YOUR HONOR.

18 I THINK THE KEY POINT HERE IS THAT WE DO NEED TO THINK  
19 ABOUT WHAT ELSE THE PATENT SAYS ABOUT THE DIFFERENCE BETWEEN  
20 DATABASES AND WORD PROCESSING FILES.

21 SO IF WE LOOK JUST BELOW HERE ON COLUMN 11, AND THERE'S  
22 SOME ADDITIONAL SLIDES I'LL GET TO, BUT STARTING HERE, IT'S  
23 TALKING ABOUT THIS FORMAT, AND IT SAYS IF YOU WANTED TO IMPORT  
24 OR EXPORT DATA AND YOU CREATED THIS USING A WORD PROCESSOR  
25 FILE, YOU WOULD THEN NEED TO SAVE IT AS A TEXT FILE.

1           NOW, WHY DOES IT SAY THAT? IT SAYS THAT BECAUSE EVEN IF  
2           YOU WERE TO TYPE THESE EXACT FIELDS USING A TAB BETWEEN EACH  
3           ONE INTO MICROSOFT WORD, OR ANY OTHER WORD PROCESSOR, YOU COULD  
4           NOT IMPORT THAT INTO THE DATABASE BECAUSE THEY DON'T STORE  
5           THEIR DATA IN THIS WAY AS RECORDS AND FIELDS. THEY HAVE A  
6           DIFFERENT STRUCTURE.

7           AND WE SEE THAT AGAIN AND AGAIN IN THE PATENTS. THIS IS  
8           COLUMN 7 OF THE '731 PATENT. IT TALKS ABOUT THE ORIGINAL TEXT,  
9           THE INPUT TEXT BEING EITHER IN A TEXT FILE OR A WORD PROCESSOR  
10          FILE.

11          BUT THAT IS BEFORE IT IS PUT INTO THE DATABASE. IT DOES  
12          NOT EQUATE THE TWO THINGS. YOU HAVE AN INPUT DATA, TEXT OR  
13          WORD PROCESSOR, AND THEN YOU LOWER -- YOU CUT IT, YOU HAVE TO  
14          CUT IT, YOU CAN'T JUST TAKE IT AND PUT IT INTO THE DATABASE,  
15          THEY USUALLY USE A VISUAL CUTTER, SOMEBODY TAKES A MOUSE,  
16          SELECTS EACH WORD, AND THAT IS WHAT IS THE WORDIFIED DATABASE.  
17          IT'S NOT THE INPUT DATA. IT'S NOT THE TEXT FILE. IT'S NOT THE  
18          WORD PROCESSOR FILE.

19          SO WHATEVER "DATABASE" MEANS, WE START TO SEE THAT IT HAS  
20          TO BE SOMETHING DIFFERENT THAN A WORD PROCESSOR FILE OR A TEXT  
21          FILE, AND WE SEE IT AGAIN IN COLUMN 5. WE SEE THAT YOU START  
22          WITH A BOOK -- SENTIUS IS CORRECT. YOU START WITH A BOOK OR  
23          OTHER MULTIMEDIA SOURCE. IT COULD BE A TEXT FILE. IT COULD BE  
24          A MULTIMEDIA FILE. ALL OF THOSE HAVE A GIVEN STRUCTURE,  
25          GRANTED.

1 BUT THOSE ARE NOT THE DATABASE.

2 AND I THINK IT'S EVEN THE MOST CLEAR IN THE '985 PATENT  
3 FAMILY WHERE THEY ACTUALLY TALK ABOUT SPECIFIC FILE TYPES,  
4 INCLUDING MICROSOFT WORD. THEY SAY YOUR SOURCE DATA CAN BE  
5 XML, HTML, RTF, WORD, ACROBAT.

6 BUT THOSE ARE NOT THE DATABASE. THOSE ARE THE SOURCE  
7 FILES.

8 AND, YOU KNOW, YOU LOOK AT ANY OF THESE FILE TYPES, YOU  
9 LOOK AT HTML -- THIS IS AN EXAMPLE THAT WE PUT IN OUR TUTORIAL,  
10 JUST A SAMPLE HTML WE MADE UP -- IT HAS A VERY SPECIFIC  
11 STRUCTURE, HIGHLY STRUCTURED. HTML, XML, EVEN WORD DOCUMENTS,  
12 VERY, VERY STRUCTURED.

13 BUT THE PATENT SAYS -- OR TREATS THOSE AS THE SOURCE, THE  
14 SOURCE INFORMATION, NOT THE DATABASE INFORMATION. SO THERE  
15 MUST BE SOME DIFFERENCE.

16 AND JUST TO PUT A FINER POINT ON THIS, SENTIUS, EVEN TODAY  
17 AND IN THEIR BRIEFING, THEY SAY, WELL, YOU TAKE YOUR TEXT FILE  
18 AND YOU CREATE THE WORDIFIED DATABASE; THEREFORE, THESE THINGS  
19 MUST BE THE SAME.

20 WELL, WE'RE IGNORING, OR THEY'RE IGNORING, THE STEP THAT  
21 HAPPENS HERE. IT'S NOT THE SAME. YOU HAVE TO ACTUALLY USE  
22 YOUR VISUAL EDITOR TO CUT THE FILE FIRST AND TO PUT IT INTO A  
23 FORMAT THAT'S IN THE DATABASE.

24 AND --

25 THE COURT: IF I CAN JUST GO BACK TO SLIDE 17, I

1 THINK THIS IS A HELPFUL PLACE TO FOCUS.

2 MR. LAMBERSON: YEAH.

3 THE COURT: AS I UNDERSTAND SENTIUS' ARGUMENT ON THIS  
4 PARTICULAR POINT, WHAT THEY'RE SAYING IS SOMETHING SLIGHTLY  
5 DIFFERENT, WHICH IS THAT UNDER YOUR CONSTRUCTION, THE  
6 PARTICULAR STRUCTURE THAT I THINK YOU'VE BEEN VERY TRANSPARENT  
7 IN URGING FOR EVERY DATABASE ISN'T IN PLACE UNTIL YOU GET TO  
8 THE LINKING STAGE. AND SO, FOR EXAMPLE, IN WHAT IS PLAINLY  
9 LABELED A DATABASE, A WORDIFIED DATABASE, WE DON'T HAVE THE  
10 PARTICULAR STRUCTURE THAT YOU ARE URGING BE INCLUDED IN THE  
11 CONSTRUCTION.

12 SO HOW DO I RECONCILE THAT? I WOULD APPRECIATE IT.

13 MR. LAMBERSON: WHAT I THINK WE DON'T HAVE, YOUR  
14 HONOR, IS I'M NOT AWARE OF ANY DISCLOSURE OF WHAT THIS  
15 WORDIFIED DATABASE LOOKS LIKE IN THE PATENT.

16 THE COURT: I COULDN'T FIND ANYTHING MYSELF. I  
17 THOUGHT MAYBE I MISSED SOMETHING.

18 MR. LAMBERSON: NO, I THINK THAT'S RIGHT.

19 WHAT I CAN SAY, YOUR HONOR, AND WHAT WE'VE GIVEN IN OUR  
20 PREVIOUS SLIDES, IS ALL OF THE PLACES WHERE IT DOES PROVIDE ANY  
21 INDICATION OF THE STRUCTURE, IT DOES TALK ABOUT RECORDS AND  
22 FIELDS.

23 WHAT I HAVEN'T SEEN IS ANY OTHER -- YOU KNOW, SENTIUS IS  
24 ABSOLUTELY CORRECT THAT THERE MAY BE OTHER WAYS TO STORE DATA.  
25 WE BELIEVE RECORDS AND FIELDS IS SORT OF A FUNDAMENTAL, COMMON,

1 YOU KNOW, MAYBE THE MOST COMMON WAY TO STORE DATA.

2 I'M SURE YOU COULD FIND MORE EXOTIC WAYS TO STORE DATA IN  
3 A DATABASE.

4 WHAT WE KNOW IS THESE PATENTS DON'T TELL US WHAT THIS  
5 WORDIFIED DATABASE LOOKS LIKE. THEY ONLY TELL US WHAT A FEW OF  
6 THE DATABASES LOOK LIKE, AND FOR THOSE, THEY ALWAYS TALK ABOUT  
7 RECORDS AND FIELDS. I'M NOT AWARE OF ANY OTHER DISCLOSURE OF  
8 ANY OTHER STRUCTURE.

9 SO, YOU KNOW, WE'RE FACED WITH A CHOICE BETWEEN NO  
10 STRUCTURE AT ALL, WHICH IS SENTIUS' DEFINITION, OR THE ONLY  
11 STRUCTURE WE CAN FIND IN ANY OF THE INTRINSIC RECORD FOR WHAT A  
12 DATABASE STRUCTURE LOOKS LIKE, WHICH WE BELIEVE IS OUR PROPOSED  
13 CONSTRUCTION.

14 THE COURT: WOULD YOU AGREE, MR. LAMBERSON, THAT IT  
15 IS POSSIBLE, AND CERTAINLY CONSISTENT WITH THIS DISCLOSURE, TO  
16 HAVE DATA COLLECTED OR ORGANIZED IN AN UNSTRUCTURED MANNER? IN  
17 OTHER WORDS, IT'S POSSIBLE TO HAVE DATA IN A FILE OR IN A  
18 FOLDER THAT'S UNSTRUCTURED, RIGHT?

19 MR. LAMBERSON: SO WHEN YOU SAY "UNSTRUCTURED,"  
20 ALL -- IF DATA IS IN A FILE, IT IS STRUCTURED IN THE SENSE THAT  
21 SOMEBODY KNOWS HOW TO READ IT. I MEAN, THE ONLY TRULY  
22 UNSTRUCTURED DATA WOULD BE RANDOM DATA THAT'S NOT EVEN, YOU  
23 KNOW -- IF YOU'RE ABLE TO LOOK AT THE DATA WITH SOMETHING, THEN  
24 IT HAS SOME STRUCTURE.

25 THE COURT: ISN'T THAT THE POINT, THAT YOU MAY NOT BE

1 ABLE TO LOOK AT IT BECAUSE IT COULD BE UNSTRUCTURED, AND ISN'T  
2 THE POINT OF THIS DESCRIPTION, AGAIN IN COLUMN 7 AND COLUMN 11,  
3 SIMPLY THAT THERE HAS TO BE SOME STRUCTURE TO PERMIT THE VISUAL  
4 EDITOR TO DO ITS JOB? THAT'S HOW I WAS READING IT, BUT MAYBE  
5 I'VE GOT IT WRONG.

6 MR. LAMBERSON: WELL, I WOULD SAY TWO POINTS, YOUR  
7 HONOR. THERE MUST BE SOME STRUCTURE FOR THE VISUAL EDITOR TO  
8 BE ABLE TO OPEN IT, ABSOLUTELY RIGHT. THAT DOESN'T MEAN IT'S A  
9 DATABASE STRUCTURE. THAT DOESN'T MEAN A TEXT FILE IS A  
10 DATABASE.

11 THERE ALSO MUST BE SOME STRUCTURE TO THE WORDIFIED  
12 DATABASE. THE PATENT DOESN'T TELL US WHAT IT IS, BUT WE KNOW  
13 AT THIS POINT IT IS A DATABASE, AND WE KNOW AT THIS POINT IT'S  
14 NOT CALLED A DATABASE. IT DOESN'T CALL IT THE TEXT DATABASE.  
15 IT NEVER CALLS THE SOURCE DOCUMENTS THE DATABASE.

16 ONLY ONCE THEY'VE BEEN RUN THROUGH THIS VISUAL EDITOR DOES  
17 IT BECOME -- IS IT TRANSFORMED AND IS THE STRUCTURE CHANGED  
18 INTO THE WORDIFIED DATABASE.

19 SO IT WOULD BE -- IT WOULD BE VERY HELPFUL IF WE KNOW WHAT  
20 THAT LOOKED LIKE. WE DON'T, BUT WE DO HAVE OTHER DISCLOSURES  
21 ABOUT OTHER DATABASES AND ALL OF THEM USE RECORDS AND FIELDS,  
22 AND WE BELIEVE, YOU KNOW, GIVEN THAT AND GIVEN THE CHOICE WE'RE  
23 FACED WITH HERE, THAT IS WHAT THE INTRINSIC RECORD TEACHES  
24 ABOUT DATABASES.

25 THE COURT: OKAY. SO IF I UNDERSTAND WHAT YOU'RE

1 SAYING CORRECTLY, WHAT YOU'RE SAYING IS THAT CERTAINLY IN ORDER  
2 FOR THE VISUAL EDITOR TO DO ITS JOB, THERE MUST BE SOME  
3 STRUCTURE TO IT, AND IMPORTANTLY, A STRUCTURE THAT THE VISUAL  
4 EDITOR UNDERSTANDS. THAT'S THE KEY, RIGHT?

5 MR. LAMBERSON: THAT'S RIGHT.

6 THE COURT: OKAY. BUT THAT STRUCTURE ALONE IS  
7 INSUFFICIENT TO LABEL THAT TEXT FILE A DATABASE ACROSS THE  
8 BOARD?

9 MR. LAMBERSON: THAT'S RIGHT. AND THE PATENT DOESN'T  
10 DO SO AND DOESN'T TREAT IT AS A DATABASE.

11 THE COURT: SO THEN HOW DO YOU RECONCILE, MAYBE  
12 YOU'RE ABOUT TO GET TO THIS, BUT HOW DO YOU RECONCILE THAT WITH  
13 THE DEPENDENT CLAIM ARGUMENT MR. TRIBBLE WAS MAKING A FEW  
14 MINUTES AGO?

15 MR. LAMBERSON: I DON'T BELIEVE THERE'S ANY  
16 INCONSISTENCY, YOUR HONOR. IT IS POSSIBLE, AND MAYBE I'LL  
17 SWITCH SLIDES -- THIS ISN'T IN THE DECK, BUT -- THIS IS A  
18 BACKUP SLIDE I DIDN'T KNOW I WOULD NEED TO USE. I APOLOGIZE.

19 THE COURT: THAT'S ALL RIGHT.

20 MR. LAMBERSON: I CAN GET A BACKUP.

21 BUT WHAT I WANTED TO SHOW HERE, YOUR HONOR, THIS WOULD BE  
22 A SIMPLE TEXT FILE ORGANIZED -- THIS WOULD BE A COMMON  
23 DELIMITED FILE. YOU HAVE YOUR RECORDS AND FIELDS AND YOU HAVE  
24 A COMMA BETWEEN THE DIFFERENT FIELDS.

25 SO ALL WE BELIEVE THE DEPENDENT CLAIMS ARE SAYING IS THAT



1       YOU COULD USE THIS STRUCTURE OR YOU COULD USE WHATEVER  
2       STRUCTURE ORACLE USES, MICROSOFT ACCESS, SQL SERVER, WHATEVER  
3       DATABASE STRUCTURE YOU WANT TO USE IS FINE, AND TEXT FILES ARE  
4       CERTAINLY ONE OF THEM IF YOU ORGANIZE IT LIKE THIS.

5               BUT THAT IS NOT -- THAT IS NOT THE SAME THING AS SAYING  
6       THAT ALL TEXT FILES ARE DATABASES.

7               THE COURT:   AND IF I CAN JUST GO BACK TO YOUR POINT A  
8       MINUTE AGO, BECAUSE -- IF I CAN ANTICIPATE YOUR NEXT POINT --  
9       THERE IS A SET OF RECORDS AND FIELDS STRUCTURED IN A WAY THAT  
10      THE VISUAL EDITOR UNDERSTANDS.

11              MR. LAMBERSON:   WELL, AND NOT EVEN JUST THAT THE  
12      VISUAL EDITOR UNDERSTANDS.   THIS FILE HAS RECORDS AND FIELDS  
13      AND THERE ARE MANY DATABASES THAT COULD READ AND IMPORT THIS  
14      PARTICULAR TYPE OF FILE.   YOU COULD LOAD THIS DATA INTO  
15      MICROSOFT ACCESS, FOR EXAMPLE.   IT KNOWS HOW TO OPEN IT BECAUSE  
16      IT HAS RECORDS AND FIELDS.

17              IF YOU WERE TO JUST TYPE THIS INTO WORD AND SAVE IT AS A  
18      WORD FILE, THE EXACT SAME TEXT, MICROSOFT -- I SHOULDN'T SPEAK  
19      ABOUT ACCESS.   MAYBE IT KNOWS HOW TO BEHIND THE SCENES DO IT.

20              BUT DATABASES IN GENERAL COULD NOT JUST TAKE THAT AND  
21      IMPORT IT.   THEY WOULD HAVE TO -- EVEN IF ACCESS WERE TO KNOW  
22      HOW TO DO IT, CONVERT IT TO A WORD FILE, TO A TEXT FILE AND  
23      THEN DO IT, THE POINT IS YOU NEED -- YOU KNOW, IT IS POSSIBLE  
24      TO CREATE A TEXT FILE THAT HAS RECORDS AND FIELDS.

25              EVEN THEN, YOUR HONOR, I'M NOT SURE IT'S COMPLETELY

1 ACCURATE TO CALL THAT A DATABASE BY ITSELF JUST SITTING ON A  
2 DISK. WHEN YOU LOOK AT THE PATENT, AS I MENTIONED, IT TALKS  
3 ABOUT THESE AS DELIMITED FILES. IT DOESN'T SAY THAT ITSELF IS  
4 A DATABASE. I THINK WE COULD QUIBBLE ABOUT THAT. THE  
5 DEPENDENT CLAIM SUGGESTS THAT IT IS.

6 WE DON'T NEED TO GO THERE. THE KEY POINT IS THAT, YES, IT  
7 IS POSSIBLE, IF YOU USE RECORDS AND FIELDS, TO MAKE A TEXT FILE  
8 INTO A DATABASE STRUCTURE IF YOU CHOOSE.

9 THAT DOES NOT MEAN ALL TEXT FILES ARE DATABASES. IF THEY  
10 DON'T HAVE THE STRUCTURE, THEY'RE NOT. CERTAINLY IT DOES NOT  
11 MEAN THAT POWERPOINT SLIDES, E-MAILS, WORD DOCUMENTS ARE  
12 DATABASES. THEY ARE NOT.

13 SO THAT -- I DON'T VIEW THERE AS BEING ANY CLAIM  
14 DIFFERENTIATION ISSUE AT ALL. WE'RE NOT DISPUTING THAT.

15 THE COURT: RIGHT. SO, AGAIN -- AND I APOLOGIZE FOR  
16 REPEATING MYSELF -- BUT IF WE GO BACK TO YOUR CONSTRUCTION, YOU  
17 WOULD SUGGEST THAT YOUR CONSTRUCTION COULD BE APPLIED IN THE  
18 CONTEXT OF THE DEPENDENT CLAIM WHERE THE DEPENDENT CLAIM  
19 SPECIFIES THAT THE DATABASE IS A TEXT FILE.

20 THE KEY IS THAT THE TEXT FILE WOULD HAVE TO HAVE THE  
21 RECORDS AND FIELDS JUST AS ANY OTHER DATABASE WOULD HAVE TO?

22 MR. LAMBERSON: THAT'S RIGHT, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. LAMBERSON: ONE OTHER KEY POINT I WANTED TO  
25 EMPHASIZE HERE, YOUR HONOR, IS THIS, THE FILE HISTORY ISSUE.

1 THE COURT: I DID WANT TO GET TO THE HISTORY OF IT,  
2 YEAH, THANK YOU.

3 MR. LAMBERSON: AND THIS APPLIES TO BOTH THE DATABASE  
4 ISSUE AND THE LINKING ISSUE. I THINK IT SORT OF EQUALLY  
5 APPLIES TO BOTH.

6 THE ISSUE HERE IS IF YOU LOOK AT THE -- SO I THINK WE  
7 EXPLAINED IN OUR TUTORIAL, YOU HAVE THE '720 PATENT WHICH WAS  
8 SORT OF -- WE'LL CALL IT THE PARENT, I SUPPOSE, BUT IT'S THE  
9 ORIGINAL SENTIUS PATENT FILED IN '94, IT WAS INVALIDATED, AND  
10 WHAT SENTIUS, OR ANY PATENT OWNER, CAN DO IF THAT HAPPENS IS  
11 GET RE-ISSUED PATENTS OUT OF IT. SO THE RE-ISSUED  
12 PATENTS-IN-SUIT BOTH CAME FROM THE '720 PATENT.

13 SO IT REALLY IS -- I CALL IT THE PARENT, BUT IT REALLY IS  
14 THE SAME PATENT IN A SENSE. THEY'VE JUST ASKED THE PATENT  
15 OFFICE TO GO BACK AND CHANGE THE CLAIMS. THAT'S THE ONLY  
16 DIFFERENCE.

17 SO WE BELIEVE THE PROSECUTION HISTORY FOR THE '720 PATENT  
18 IS JUST AS IMPORTANT TO THE RE-ISSUED PATENTS AS THE  
19 PROSECUTION HISTORY FOR THE RE-ISSUE PROCEEDINGS.

20 SO WHAT HAPPENED IN THE '720 PROSECUTION?

21 WELL, THERE WAS A REJECTION OVER THIS TRANSPARENT LANGUAGE  
22 PROGRAM AND THE CASSORLA PATENT, AN OBVIOUSNESS REJECTION, AND  
23 THE TRANSPARENT LANGUAGE PROGRAM, AS WE INDICATED IN OUR  
24 TUTORIAL, IT'S BASICALLY A PROGRAM FOR DOING SOMETHING VERY  
25 SIMILAR TO WHAT SENTIUS PURPORTED TO BE OFFERING, ALLOWING YOU

1 TO TRANSLATE AND SEE DEFINITIONS FOR FOREIGN LANGUAGE  
2 DOCUMENTS.

3 BUT WHAT THE PATENT OFFICE SAID IS THE DISCLOSURE THEY HAD  
4 BEFORE THEM DIDN'T SPECIFICALLY SHOW HOW, WHEN YOU CLICK, IS  
5 THAT TRANSLATED INTO SHOWING THE TRANSLATION.

6 BUT THEY SAY, YOU KNOW WHAT, THAT IS SOMETHING THAT'S  
7 OBVIOUS. CLICKING ON SOMETHING AND HAVING INFORMATION POP UP  
8 IS OBVIOUS. IN '94 EVEN THAT WAS VERY TYPICAL.

9 AND THE EXAMPLE THEY GIVE IS THIS CASSORLA PATENT. AND  
10 THIS SLIDE IS A LITTLE BUSY, BUT WHAT WE HAVE ON THE BOTTOM IS  
11 THE CASSORLA PATENT.

12 AND ON THE TOP IS WHAT SENTIUS SAID IN RESPONSE. SO WHAT  
13 DID SENTIUS SAY ABOUT THIS -- WELL, MAYBE I'LL START WITH THE  
14 CASSORLA PATENT.

15 SO THE CASSORLA PATENT, WHAT IT WAS, YOU HAD BASICALLY A  
16 FILE -- AND THAT'S WHAT'S SHOWN IN FIGURE 2 OF CASSORLA, WHICH  
17 WAS EXHIBIT E TO MY DECLARATION -- AND IT'S STRUCTURED. RATHER  
18 LIKE HTML, IT'S GOT HEADINGS, PARAGRAPHS.

19 AND WHAT CASSORLA DID IS THEY GAVE EACH TAB BASICALLY AN  
20 ADDRESS, OR A SET OF FLAGS YOU COULD CALL THEM, OR NUMBERS.

21 AND THEY -- EACH ONE CORRESPONDED TO ONE OF THESE  
22 HEADINGS. AND THEN IF A USER WANTED TO PUT IN ANNOTATIONS,  
23 THAT WOULD NOTE WHAT LOCATION THEY WANTED THE ANNOTATION AND  
24 THEN WHAT THE ANNOTATION WAS, AND YOU COULD HAVE MULTIPLE USERS  
25 DOING ANNOTATIONS, SO YOU COULD HAVE -- THIS IS THE SAME

1 LOCATION, USER NUMBER 2, ITEM NUMBER 2. AND SO THE FIRST USER  
2 SAID, IS THE -- SPELLING, QUESTION MARK? THE SECOND USER SAYS  
3 IT'S OKAY.

4 SO THAT'S WHAT CASSORLA DID TO APPLY ANNOTATIONS TO A  
5 DOCUMENT.

6 AND WHAT SENTIUS SAID IN RESPONSE IS THAT CASSORLA USES  
7 RELATIVE POSITION WITHIN THE DOCUMENT TO FIX THE POSITION OF  
8 THE ANNOTATIONS, THEREBY GENERATING IDENTIFYING TAGS. THE TAGS  
9 ARE USED TO RETRIEVE THE ANNOTATIONS BASED ON THE POSITION IN  
10 THE DOCUMENT.

11 SO I JUST WANTED TO MAKE CLEAR HERE THAT WE'RE NOT TALKING  
12 ABOUT TAGS IN THE SENSE THAT I THINK SENTIUS SHOWED IN ITS  
13 TUTORIAL HAVING ACTUAL, YOU KNOW, TAGS WITHIN THE BODY THAT  
14 REFERRED TO LIKE AN HTML LINK REFERRING OUT TO THE EXTERNAL  
15 CONTENT. THAT'S NOT WHAT CASSORLA IS DOING.

16 BUT IT IS USING THIS METHOD OF INDICATING WHAT THE TAGS  
17 ARE, AND IT IS FIXED IN THE SENSE BECAUSE YOU'VE GOT AN ADDRESS  
18 HERE AND AN ADDRESS HERE.

19 SO THE POINT HERE, YOUR HONOR, AND WHAT SENTIUS SAID IN  
20 RESPONSE, THIS WAS A CROWDED FIELD. YOU HAD A LOT OF -- AS THE  
21 PATENT OFFICE SAID, CLICKING AND GETTING DATA IS NOT ANYTHING  
22 NEW OR NOVEL, AND SO SENTIUS HAD TO BE VERY SPECIFIC.

23 AND WHAT DID SENTIUS HAVE TO DO TO GET THIS PATENT  
24 ALLOWED? IT HAD TO ADD BASICALLY TWO LIMITATIONS. IT HAD TO  
25 HAVE THE ADDRESS ON THE ELECTRONIC DATABASE FOR THE SOURCE

1 MATERIAL IMAGE, AND THAT'S STORED IN A LOOK-UP TABLE.

2 SO WE WOULD SUBMIT THAT FOR BOTH THIS AND THE LINKING  
3 TERM, THIS DATABASE STRUCTURE AND THE METHOD OF USING THE  
4 ADDRESSES TO REFER TO TABLES BASICALLY IN A DATABASE WAS  
5 CRITICAL AND WAS, IN FACT, THE -- I MEAN, THE CLAIMS WERE  
6 ALLOWED AFTER THIS AMENDMENT AND ARGUMENT.

7 THE COURT: I SEE. SO WHAT YOU'RE SAYING IS THIS  
8 DISTINCTION OVER CASSORLA COULD NEVER HAVE BEEN SUSTAINED IF  
9 THE, IF THE DATABASE AREN'T STRUCTURED WITH RECORDS AND FIELDS  
10 THAT ALLOWED THIS PARTICULAR RELATIONSHIP TO BE MADE? IS THAT  
11 THE CASE?

12 MR. LAMBERSON: WE BELIEVE SO, YES, YOUR HONOR.

13 AND I WOULD ASK SENTIUS, IN FACT, YOU KNOW, WHAT IS IT  
14 ABOUT CASSORLA THAT IS NOT A DATABASE UNDER THEIR CONSTRUCTION?  
15 AND WHAT IS IT THAT DOESN'T HAVE, DOESN'T HAVE ADDRESSES?

16 I BELIEVE IT DOES. THESE ARE, IN A SENSE, AN ADDRESS.

17 SO, YOU KNOW, UNDER THEIR DEFINITION, I BELIEVE CASSORLA  
18 WOULD BE A DATABASE. WHEN WE LOOK AT THE FILE HISTORY, WE  
19 BELIEVE, WHEN READ IN CONTEXT, SENTIUS IS BEING MUCH MORE  
20 SPECIFIC HERE. THEY'RE TALKING ABOUT THE SPECIFIC TABLE, TABLE  
21 DATABASE STRUCTURE WITH LINKS.

22 THE COURT: IS SENTIUS, IN THIS HISTORY OR IN ITS  
23 BRIEFING, TAKING THE POSITION THAT CASSORLA WOULD NOT BE A  
24 DATABASE? I DIDN'T UNDERSTAND THAT TO BE WHAT THEY WERE  
25 SAYING.

1 MR. LAMBERSON: WELL, THEY HAD TO AMEND AROUND  
2 CASSORLA, AND THE LIMITATION THEY ADDED WAS ADDRESS IN AN  
3 ELECTRONIC DATABASE.

4 SO, YOU KNOW, AND THE ARGUMENT THEY MADE FOCUSSED ON THE  
5 TAGGING. BUT THEY DIDN'T ADD AN AMENDMENT RELATED TO TAGS.

6 THE ONLY CLAIM AMENDMENT THEY MADE -- AND THIS IS IN  
7 EXHIBIT D TO OUR DECLARATION -- THE ONLY AMENDMENT TO THE  
8 CLAIMS WAS TO ADD THIS ADDRESS IN AN ELECTRONIC DATABASE.

9 SO THAT HAD TO BE, FOR THE PATENT OFFICE, WHAT GOT THIS  
10 PATENT ALLOWED IN OUR VIEW.

11 THE COURT: BUT COULDN'T THAT AMENDMENT STAND, EVEN  
12 UNDER THEIR CONSTRUCTION, THAT THERE WAS A STRUCTURE TO THE  
13 COLLECTION OF DATA, PRESUMABLY, THAT INCLUDED AN ADDRESS AND ON  
14 THAT BASIS THE ARGUMENT WOULD BE JUST AS EFFECTIVE WITH THEIR  
15 CONSTRUCTION AS YOURS?

16 MR. LAMBERSON: WELL, I THINK THE POINT I WOULD MAKE  
17 HERE, YOUR HONOR -- AND THIS WILL APPLY TO THE LINK ARGUMENT AS  
18 WELL -- IF YOU'RE GOING TO TAKE A DEFINITION OF DATABASE THAT  
19 COVERS ANYTHING, AND IF YOU'RE GOING TO TAKE A DEFINITION OF  
20 LINK THAT COVERS ANYTHING, THERE IS NO WAY TO DISTINGUISH  
21 CASSORLA.

22 WE KNOW THEY DID SO AND WE KNOW THEY ADDED TO THE CLAIMS  
23 AND WE KNOW WHAT THEY ARGUED. WE KNOW THEY TALKED ABOUT HAVING  
24 A DATABASE, AN ELECTRONIC DATABASE. THE WORD "DATABASE" WAS  
25 ADDED TO THE CLAIMS.

1 WE KNOW THAT THEY TALKED ABOUT HAVING A LOOK-UP TABLE AND  
2 THE ADDRESSES SPECIFICALLY TO FIND THE DATA IN THAT DATABASE.

3 THE COURT: UM-HUM.

4 MR. LAMBERSON: THAT'S WHAT WE KNOW THEY ADDED.

5 AND I THINK THAT WE HAVE TO GIVE THIS SOME MEANING. WE  
6 CAN'T NOW ERASE ALL OF THAT BY ADOPTING A BROAD DEFINITION FOR  
7 BOTH DATABASE AND LINK THAT BASICALLY ELIMINATES ANY  
8 DISTINCTION THAT COULD HAVE BEEN DRAWN.

9 I AGREE WITH YOU THAT IT'S POSSIBLE TO READ -- SO THE TWO  
10 POSSIBLE DISTINCTIONS WOULD BE HAVING A DATABASE VERSUS NOT  
11 HAVING A DATABASE. THEY DID ADD THAT TO THE CLAIMS.

12 AND THEN THE SECOND ONE WOULD POTENTIALLY BE -- I'D HAVE  
13 TO GO BACK AND LOOK AT WHAT THEY ADDED TO THE CLAIMS ABOUT THE  
14 LINKS, WHETHER THE ADDRESS --

15 THE COURT: JUST FOCUSSING ON THAT FIRST POINT,  
16 BECAUSE I DO THINK THAT'S IMPORTANT, IT WOULD SEEM TO ME THAT  
17 WHAT SENTIUS IS SAYING HERE -- THIS IS HOW I READ IT EARLIER  
18 ANYWAY -- WAS, "LOOK, THERE'S AN ADDRESS ON THE DATABASE.  
19 THAT'S HOW WE DISTINGUISH CASSORLA," AND THEIR CONSTRUCTION  
20 ISN'T NECESSARILY CONSISTENT WITH THAT BECAUSE UNDER THEIR  
21 CONSTRUCTION, AGAIN, THERE'S A STRUCTURED COLLECTION OF DATA  
22 THAT INCLUDES THE ADDRESS, SO THERE'S NO INCONSISTENCY.

23 MR. LAMBERSON: WELL, IT'S NOT THAT IT'S  
24 INCONSISTENT, YOUR HONOR. IT'S THAT THEY WERE CLEARLY SAYING  
25 SOMETHING WAS DIFFERENT ABOUT CASSORLA.



1 THE COURT: ABSOLUTELY.

2 MR. LAMBERSON: AND THE QUESTION IS, WHAT IS IT?

3 AND I DON'T THINK THEIR CONSTRUCTION CAPTURES IT BECAUSE  
4 THEIR CONSTRUCTION WOULD READ ON CASSORLA.

5 SO THERE MUST BE SOME DIFFERENCE HERE. WE BELIEVE THE  
6 DIFFERENCE THEY'RE TALKING ABOUT IS THE STRUCTURE OF THE  
7 DATABASE AND THE FACT THAT IT HAS TABLES, WHICH WE BELIEVE  
8 CONNOTES RECORDS AND FIELDS.

9 THE COURT: AND I APOLOGIZE IF I'M JUST NOT GROKING  
10 THE POINT.

11 I READ THE DISTINCTION OVER CASSORLA AS RELATING TO THE  
12 FACT THAT THERE WAS AN ADDRESS, IN WHATEVER YOU DEFINE THE  
13 DATABASE TO BE, THAT'S BASICALLY FIXED OR DETERMINED, RIGHT?

14 SO REGARDLESS OF HOW SPECIFIC, OR WHAT SPECIFIC STRUCTURE  
15 THE DATABASE HAS, SO LONG AS THE CLAIMED INVENTION MAKES CLEAR  
16 THAT THERE'S AN ADDRESS THAT'S FIXED FOR THE SOURCE MATERIAL IN  
17 THAT DATABASE, CASSORLA IS DISTINGUISHED, RIGHT?

18 MR. LAMBERSON: IT MAY BE POSSIBLE TO READ IT THAT  
19 WAY, YOUR HONOR.

20 BUT I WOULD SUBMIT THAT THE CLAIMS DON'T, DON'T TRACK  
21 THAT, AND THE AMENDMENT THAT WAS MADE HAD NOTHING TO DO WITH  
22 WHETHER LINKS WERE FIXED OR NOT FIXED.

23 SENTIUS' PROPOSED CONSTRUCTION FOR LINK, AND MICROSOFT'S  
24 FOR THAT MATTER, DOESN'T SAY ANYTHING ABOUT FIXED OR NOT FIXED.

25 AND IN FACT, THE ONLY AMENDMENT THAT WAS MADE WAS TO ADD

1 "ADDRESS ON AN ELECTRONIC DATABASE."

2 SO PERHAPS IT'S POSSIBLE TO READ IT THAT WAY, BUT I THINK  
3 WE DO HAVE TO LOOK AT THE ACTUAL CLAIM AMENDMENT, AND I COULD  
4 PULL UP THE ACTUAL EXHIBIT IF THAT WOULD BE HELPFUL.

5 ONE OTHER POINT HERE, YOUR HONOR, I DID WANT TO -- I KNOW  
6 WE'RE TAKING A LOT OF TIME -- BUT I DID WANT TO TOUCH ON THE  
7 EXTRINSIC EVIDENCE BECAUSE THAT EXISTS FOR US AS WELL AS  
8 SENTIUS, OBVIOUSLY. CERTAINLY NOT AS POWERFUL AS THE INTRINSIC  
9 RECORD THAT WE JUST LOOKED AT, BUT IT ALSO HAS TO BE  
10 CONSIDERED.

11 THE FIRST ONE I WANTED TO POINT OUT -- THIS WAS EXHIBIT C,  
12 IT'S DEPOSITION TESTIMONY FROM BRIAN YAMANAKA, WHO'S A NAMED  
13 INVENTOR. THIS WAS TAKEN FROM THE FLYSWAT LITIGATION.

14 AND THIS JUST UNDERSCORES THE POINT THAT IN THEIR SYSTEM,  
15 YOU HAVE DATA FILES THAT THEY RECEIVED FROM A PUBLISHER OF  
16 JAPANESE DICTIONARIES, AND HE SAID THEY HAD TO CONVERT THEM,  
17 CONVERT THEM INTO A DATABASE. IT WASN'T THAT THESE DATA FILES  
18 WERE THE DATABASE. THEY HAD TO BE CONVERTED.

19 SAME THING DOWN HERE. DATA FILE, LIKE A TEXT FILE, YOU  
20 COULD IMPORT IT INTO THE DATABASE FORMAT. SO YOU HAD TO HAVE  
21 A -- A DATABASE FORMAT WAS SOMETHING DIFFERENT THAN THE SOURCE  
22 DOCUMENT.

23 THE COURT: WELL, BUT ISN'T -- YOU CAN STAY THERE FOR  
24 A MOMENT. I THOUGHT THE POINT OF THIS EXCERPT WAS IT HAS TO BE  
25 SEARCHABLE OR SOMETHING THAT COULD BE PROCESSED. YOU CAN START

1 WITH A DATABASE, BUT IT STILL MAY NOT BE SEARCHABLE DATA.  
2 WE'VE GOT TO GET IT TO A POINT WHERE WE CAN DO SOMETHING TO IT.

3 MR. LAMBERSON: WELL, YOU HAVE TO BE ABLE TO LOAD IT  
4 IN THE FIRST INSTANCE, THOUGH. AND THE ONLY POINT WE WERE  
5 TRYING -- SO I DO AGREE THAT THERE ARE ADDITIONAL THINGS  
6 TYPICALLY THAT A DATABASE WOULD HAVE TO SUPPORT, AND PERHAPS  
7 EVEN BE SUPPORTED BY THE INTRINSIC RECORD, LIKE SEARCHABILITY,  
8 AN INDEX, FOR EXAMPLE.

9 FIGURE 2 THAT WE'VE TALKED ABOUT QUITE A BIT, THE LOOK-UP  
10 TABLE, THE PATENT CALLS IT AN INDEX REPEATEDLY AND EVERYBODY  
11 AGREES THAT ALL THE CLAIMS HAVE THAT LOOK-UP TABLE. SO  
12 IMPLICITLY, THE CLAIMS DO REQUIRE AN INDEX OR AN INDEXED  
13 DATABASE.

14 IN ANY EVENT, THE ONLY THING WE WERE TRYING TO POINT OUT  
15 HERE IS THAT IT'S SIMPLY NOT CORRECT, AS SENTIUS DOES, TO DRAW  
16 A LARGE BOX -- YOU KNOW, TO SAY THAT THE WORDIFIED DATABASE IS  
17 THE SAME AS THE INPUT DATA, THAT EVEN THEIR OWN INVENTOR, WHEN  
18 HE WAS ASKED ABOUT IT --

19 THE COURT: AND THE FIGURE MAKES CLEAR THOSE ARE TWO  
20 DISTINCT ENTITIES, RIGHT?

21 MR. LAMBERSON: THAT'S RIGHT, YOUR HONOR.

22 AND WE ALSO CITED SOME DATABASES -- NOW, SO WE PRIMARILY  
23 TOOK OUR EXAMPLE FROM EXHIBIT F, NEWTON'S TELECOM DICTIONARY,  
24 '94, THE RECORD AND FIELD EXAMPLE WE TOOK FROM THERE. WE  
25 THOUGHT IT WAS HELPFUL.

1           THERE ARE OTHERS THAT TALK ABOUT RECORDS AND FIELDS.

2           THERE ARE ALSO OTHERS, THOUGH, THAT TALK LOOSELY ABOUT ANY  
3           AGGREGATION OF DATA. NO DOUBT THAT IS TRUE.

4           BUT WHAT THE FEDERAL CIRCUIT HAS SAID IS THIS IS NOT AN  
5           EXERCISE IN FINDING THE BROADEST POSSIBLE DICTIONARY AND THEN  
6           SAYING THAT'S THE ONE. IT'S WHAT DOES THE INTRINSIC RECORD  
7           SUPPORT AND, YOU KNOW, SENTIUS SAID SOMETHING TO THE EFFECT OF,  
8           YOU KNOW, THIS IS AN UNUSUAL CASE, I THINK THEY WERE REFERRING  
9           TO THE FACT THAT WE WERE TALKING ABOUT THE ACCUSED PRODUCTS SO  
10          MUCH, AND I AGREE THAT IT IS AN UNUSUAL CASE.

11          I CAN SAY I HAVE NEVER SEEN A PATENT WHERE YOU ACTUALLY  
12          HAVE THE ACCUSED PRODUCT DISCUSSED IN THE PATENT AS BEING  
13          SOMETHING DIFFERENT THAN THEY'RE NOW ACCUSING IT, SO I DO THINK  
14          THAT IS UNIQUE AND DIFFERENT.

15          AND I THINK WHEN WE'RE LOOKING AT THOSE OTHER DATABASE  
16          CASES OR OTHER EXTRINSIC SOURCES, WE HAVE TO KEEP THAT IN MIND,  
17          THAT THEY DIDN'T HAVE THAT FACT, AND IT IS A CRITICAL AND  
18          REALLY SORT OF STRIKING FACT FOR THIS CASE.

19          THE OTHER THING I'D POINT OUT, YOUR HONOR, IF YOU ACTUALLY  
20          READ THE DATABASE CASES THEY CITED, NONE OF THEM -- THIS  
21          DISPUTE ABOUT RECORDS AND FIELDS ISN'T RAISED IN ANY OF THEM.  
22          MANY OF THEM HAVE TO DO WITH WHETHER IT'S RELATIONAL OR NOT.

23          AS I SAID, THAT'S NOT OUR ARGUMENT. SO I DON'T BELIEVE,  
24          EVEN IF YOU DID CONSIDER THEM -- FIRST OF ALL, THEY ARE  
25          EXTRINSIC. THEY DON'T HAVE OUR RECORD. BUT EVEN IF YOU WERE

1 TO LOOK AT THEM, I DON'T THINK THEY SHED A LOT OF LIGHT ON THE  
2 DISPUTE HERE.

3 AND JUST THE FINAL POINT, YOUR HONOR, WE DO HAVE TO KEEP  
4 SECTION 112 IN MIND WHEN WE'RE FACED WITH A DEFINITION AS BROAD  
5 AS SENTIUS'.

6 I THINK ALL PARTS OF IT COME INTO PLAY. YOU KNOW, WHAT  
7 ARE THE BOUNDARIES WOULD GO TO DEFINITENESS. IS THERE ANY  
8 BOUNDARY?

9 CAN SENTIUS POSSIBLY SAY -- IF WE ADOPT THEIR BROAD  
10 DEFINITION WHERE AN E-MAIL IS A DATABASE OR A POWERPOINT FILE,  
11 CAN THEY POSSIBLY SHOW THAT THEY HAD POSSESSION OF THAT? I  
12 DON'T BELIEVE SO.

13 CAN THEY POSSIBLY SHOW HOW TO ENABLE AN E-MAIL DATABASE?  
14 I DON'T BELIEVE SO.

15 SO WE DO HAVE TO KEEP THAT IN MIND WHEN WE'RE CONSTRUING  
16 THE CLAIMS AS WELL.

17 THE COURT: THANK YOU VERY MUCH, MR. LAMBERSON.

18 MR. TRIBBLE, DO YOU WANT TO OFFER REBUTTAL ON THESE  
19 POINTS?

20 MR. TRIBBLE: YES, YOUR HONOR.

21 CAN WE PUT UP CLAIM 8?

22 MR. BOLES: SAY THAT AGAIN.

23 MR. TRIBBLE: CLAIM 8 ON THE '731.

24 I WANT TO BE CLEAR WHAT WE'RE TALKING ABOUT. CLAIM 8 ON  
25 THE '731. WE'LL GET TO THAT.

1 NO, YOU DON'T HAVE THE TYPED UP ONE.

2 THE COURT: I HAVE CLAIM 8 IN FRONT OF ME,

3 MR. TRIBBLE. SO --

4 MR. TRIBBLE: IT'S IN SLIDE --

5 MR. LAMBERSON: YOU CAN USE THE ELMO AS WELL.

6 MR. TRIBBLE: WE'VE GOT IT. GO TO CLAIM -- SLIDE 58,  
7 OR ACTUALLY GO TO SLIDE 56. NO, 58. WE'LL STICK WITH 58.

8 THIS IS A -- I HAVE THIS FOR THE DISCUSSION ABOUT THE  
9 ORDER OF THE STEPS, BUT THIS IS CLAIM 8 OF THE '731, AND SO I  
10 JUST WANT TO BE CLEAR THAT WHAT WE'RE TALKING ABOUT IS THE BIG  
11 FIGHT OVER INFRINGEMENT, AND THE REASON WE'RE HERE TODAY  
12 TALKING ABOUT DIFFERENT SCOPES OF WHAT "DATABASE" MAY MEAN IS  
13 STEP 1 WHERE IT TALKS ABOUT SOURCE MATERIAL STORED IN AN  
14 ELECTRONIC DATABASE. OKAY?

15 SO NOW CAN WE GO BACK TO OUR FIGURE 1 SLIDE? SLIDE 8.

16 AND SO THE ISSUE IS WHETHER THIS TEXT FILE GOING INTO THE  
17 VISUAL EDITOR, THAT'S THE SOURCE MATERIAL, OR THE SOURCE  
18 MATERIAL CAN BE ITEM 14, THE SYNCHRONIZED TEXT.

19 AND KIND OF THE IMPLIED ARGUMENT WAS, WELL, IT COMES OUT  
20 OF THE VISUAL EDITOR AND THEN IT'S A WORDIFIED DATABASE AND,  
21 THEREFORE, THE TEXT FILE -- IT REFERS TO IT AS A TEXT FILE.

22 IT DOESN'T CALL IT A DATABASE.

23 BUT ITEM 14A CALLS IT A SYNCHRONIZED TEXT AND AUDIO VISUAL  
24 FILE, OR SOMETHING LIKE THAT, AND THAT'S CLEARLY A DATABASE.

25 IT DOESN'T FOLLOW THAT WHAT WAS GOING IN IS A DATABASE.

1           AND YOU HEARD THE ARGUMENT AGAIN, IT'S IMPLIED THAT A  
2       DATABASE IS REALLY A TABLE. WHEN THEY SAY, OH, A TEXT FILE CAN  
3       BE A TABLE, LET ME SHOW YOU THIS EXTRA SLIDE NUMBER 2 I HAVE,  
4       AND HE SHOWED YOU -- IT HAD THE COLUMN HEADINGS, DATE, PUPIL,  
5       GRADE, AND THEN IT HAD RECORDS FOR EACH OF THE PUPILS. OKAY?

6           AND THAT'S -- AND SO THE QUESTION REMAINS, IF THAT'S WHAT  
7       THEY'RE LIMITING IT TO, IT EXCLUDES THE PREFERRED EMBODIMENT  
8       BECAUSE YOU HAVE A JAPANESE FILE GOING IN, IT'S JUST A TEXT  
9       FILE, IT'S NOT ENTRIES TO BE IMPORTED INTO EXCEL FOR A  
10      SPREADSHEET. IT'S JUST A TEXT FILE.

11          AND SO -- YOU KNOW, WE'VE GONE THROUGH -- YOU KNOW,  
12      JUDGE ARMSTRONG'S OPINION, THE DICTIONARIES, THE OTHER COURTS,  
13      IT'S CLEAR THAT STANDING ALONE, THE TERM "DATABASE," ALL IT HAS  
14      TO HAVE, IT HAS TO HAVE STRUCTURE THAT CAN BE STORED AND  
15      RETRIEVED.

16          AND SO IT'S NOT UNLIMITED IN SCOPE, OKAY? IT HAS TO BE  
17      STRUCTURED ENOUGH -- IN THE PREFERRED EMBODIMENT, IT HAS TO BE  
18      STRUCTURED ENOUGH SO THAT YOU CAN OPERATE ON IT WITH THE VISUAL  
19      EDITOR. THE VISUAL EDITOR IS NOT IN THE CLAIMS, BUT THERE'S A  
20      CUTTING PROCESS THAT HAS TO BE DONE, AND SO THERE HAS TO BE A  
21      STRUCTURE.

22          AND THAT'S WHAT OUR CONSTRUCTION FROM THE FLYSWAT CASE  
23      CAPTURES. IT'S A COLLECTION OF DATA WITH A GIVEN STRUCTURE.

24          YEAH, WE DON'T SAY WHAT STRUCTURE BECAUSE THERE CAN BE  
25      MANY KINDS OF STRUCTURE, BECAUSE IT HAS TO BE A STRUCTURE FOR

1       SENDING, STORING AND PROVIDING, ON DEMAND, DATA FOR AT LEAST  
2       ONE USER.

3               THE COURT:   SO ANOTHER WAY YOU MIGHT HAVE SAID THAT,  
4       MR. TRIBBLE, IT MAY BE AS GOOD TO SAY IT THE WAY YOU HAVE, BUT  
5       ANOTHER WAY YOU MIGHT HAVE SAID IT IS "A COLLECTION OF DATA  
6       WITH STRUCTURE SUFFICIENT FOR," AND THE POINT IS IT'S GOT TO BE  
7       GOOD ENOUGH TO DO THE OTHER THINGS.

8               MR. TRIBBLE:   EXACTLY, YOUR HONOR.   AND I'M NOT  
9       WEDDED TO THESE WORDS.   THESE WORDS -- I WASN'T IN THE FLYSWAT  
10      CASE AND THEY AGREED TO WHAT THEY AGREED TO AND THAT'S WHY WE  
11      STARTED WITH THAT, YOU KNOW, BUT THERE ARE THESE OTHER  
12      DEFINITIONS THAT CAPTURE THE SAME ESSENCE I GUESS IS WHAT I'M  
13      TRYING TO SAY.

14              SO THEN AT THE END OF THE DAY, THE QUESTION BECOMES, GIVEN  
15      THAT BROAD SCOPE, DID WE DO OR SAY ANYTHING TO DISAVOW, CLEARLY  
16      DISAVOW THE FULL SCOPE OF THAT CLAIM COVERAGE?

17              AND SO IN ITS ARGUMENT, MICROSOFT STARTS OUT QUOTING FROM  
18      THE '985 PATENT.

19              WELL, THE INVENTION WE'RE TALKING ABOUT -- "DATABASE" IS  
20      USED IN THE '985.   THE '985, THOUGH, WAS FILED SEVEN YEARS  
21      LATER, OKAY?   I MEAN, LET'S FOCUS ON THE '731, OKAY, THE EARLY  
22      PATENT THAT REALLY MAKE USE OF THE DATABASE, YOU KNOW, IN A  
23      DIFFERENT WAY.

24              AND BY THE WAY, TO SAY THIS IS A WORD FILE, IT REFERS TO  
25      WORD AND HTML, AND THEN OVER HERE, THE '985 LATER SAYS WELL, IT



1 CAN ALSO WORK WITH MANY COMMERCIALY ACCEPTABLE OR COMMERCIALY  
2 KNOWN DATABASE PROGRAMS, SUCH AS ORACLE AND ET CETERA, THAT IS  
3 NOT A CLEAR DISAVOWAL. IT'S NOT SAYING THAT A WORD DOCUMENT OR  
4 AN HTML DOCUMENT IS NOT A DATABASE.

5 SO AGAIN WE GET THIS COMPARISON TO THE ACCUSED PRODUCT,  
6 WHICH IS IMPROPER. WE'VE HAD AN ARGUMENT THAT, WELL, IF IT WAS  
7 CONSTRUED THAT WAY, IT WOULD BE INVALID.

8 YOU KNOW, YOU DON'T CONSTRUE CLAIMS TO BE VALID OR  
9 INVALID. YOU CONSTRUE CLAIMS, YOU KNOW, TO MEAN WHAT A PERSON  
10 OF ORDINARY SKILL WOULD UNDERSTAND THOSE TERMS TO MEAN.

11 AND SO -- AND, AGAIN, ALL OF THAT SEEMS TO BE GOING  
12 BACK -- YOU KNOW, ANYWAY, THERE'S A CLEAR ADMISSION THAT A TEXT  
13 FILE CAN BE A DATABASE. THE QUESTION IS, WHAT MAKES A TEXT  
14 FILE A DATABASE IN SOME CIRCUMSTANCES? WE SUBMIT THAT IT'S  
15 STRUCTURED ENOUGH TO ALLOW YOU TO STORE AND RETRIEVE THE DATA.

16 NOW, LET ME ADDRESS -- LET ME ADDRESS THIS -- I THINK --  
17 IT SEEMS TO ME THAT YOUR HONOR HAD CORRECTLY UNDERSTOOD THE  
18 CASSORLA REFERENCE AND STORING EVERYTHING, BUT LET'S GO TO  
19 THEIR EXHIBIT D THAT THEY RELY ON, BECAUSE THIS DOES HAVE --

20 GO TO -- IT'S PAGE 2 AT THE BOTTOM. IT'S PAGE 3 AT THE  
21 TOP, MR. BOLES.

22 AND SO IF YOU LOOK AT THIS, I DON'T HAVE IT HIGHLIGHTED,  
23 BUT FIRST OF ALL, THE FIRST THING ABOUT THE WHOLE PROSECUTION  
24 HISTORY ARGUMENT -- NO, GO BACK TO THE PRIOR PAGE, THERE WE  
25 GO -- IS IT DOESN'T RELATE GENERICALLY TO THE TERM "DATABASE."

1 THIS IS TALKING ABOUT THE SOURCE MATERIAL IMAGE STORED IN A  
2 DATABASE.

3 SO, REMEMBER, BY THE TIME IT GETS TO THE VIEWER, IT PUTS  
4 UP AN IMAGE OF THE DOCUMENT ON THE SCREEN. AND IN FACT, WE'VE  
5 PUT -- I'M NOT GOING TO -- I DON'T THINK I SHOULD SPEND THE  
6 TIME TO SHOW YOU, BUT IN OUR REPLY BRIEF, WE PUT IT AS  
7 EXHIBIT 1 WHAT THE EXAMINER'S OBJECTIONS WERE. AND THE  
8 OBJECTIONS WERE OVER THIS CONCEPT OF, YOU KNOW, DOES CASSORLA  
9 OPERATE IN THE SAME WAY TO SHOW THAT WHEN THE USER IS LOOKING  
10 AT IT AT THE END, WHEN THEY CLICK ON SOMETHING AND THE  
11 ANNOTATION POPS UP, DOES IT DO IT IN THE SAME WAY?

12 BECAUSE IF YOU LOOK AT THIS CLAIM -- FIRST OF ALL, IT'S A  
13 LOT SHORTER. IT'S DIFFERENT FROM THE CLAIMS TODAY, WHICH ARE  
14 TOTALLY DIFFERENT.

15 THE COURT: UM-HUM.

16 MR. TRIBBLE: BUT JUST STARTING OFF, THIS IS TALKING  
17 ABOUT THE IMAGE -- THE DATABASE STORING THE SOURCE MATERIAL  
18 IMAGE, NOT THE DATABASE STORING THE SOURCE MATERIAL, WHICH ARE  
19 THE CLAIMS AT ISSUE NOW.

20 AND AS YOUR HONOR CORRECTLY POINTED OUT, THEY PUT THAT IN  
21 BECAUSE OVER AND OVER AGAIN, WHAT THEY ADDED TO WERE THE WORD  
22 "ADDRESS" BECAUSE THEY'RE TALKING ABOUT THREE ADDRESSES.  
23 THEY'RE TALKING ABOUT THE STARTING POINT ADDRESS OF THE IMAGE  
24 DATABASE; AND THEN FOR THE CUTS, THERE'S A, A STARTING ADDRESS  
25 AND AN ENDING ADDRESS THAT'S BASICALLY AN OFFSET FROM THE

1 STARTING ADDRESS.

2 AND SO -- AND THEN THEY DESCRIBE THAT LATER AND THE -- AND  
3 IF WE GO TO THE LAST -- WELL, GO TO PAGE 8 OF 9. THEY QUOTED  
4 PART OF IT -- NO, THE PRIOR PAGE. THERE WE GO.

5 IF YOU LOOK AT THE FIRST LITTLE PARAGRAPH AS TO THIS IMAGE  
6 DATABASE, WHAT IT'S TALKING ABOUT IS, UNLIKE CASSORLA, IT'S  
7 TAGLESS AND MEDIA INDEPENDENT. AND IT GOES -- AND THEN THE  
8 NEXT PARAGRAPH TALKS ABOUT HOW IT STORES IN A LOOK-UP TABLE --  
9 THIS IS THE LOOK-UP TABLE -- THE START ADDRESS. IT SAYS "THE  
10 ELECTRONIC ADDRESS IS STORED." THAT'S THE BEGINNING ADDRESS OF  
11 THE DATABASE.

12 AND THEN FOR EACH OF THE DISCRETE PIECES, IT STORES THE  
13 START AND END ADDRESSES.

14 THE COURT: OR I THINK YOU JUST EXPLAINED TO ME, IN  
15 SOME INSTANCES AT LEAST, IT STORES THE OFFSET FROM THE INITIAL  
16 ADDRESS.

17 MR. TRIBBLE: CORRECT. THAT'S CORRECT.

18 THE COURT: OKAY.

19 MR. TRIBBLE: AND SO WE CAN GO BACK TO SLIDE 2.

20 THE -- AND SO THE POINT, YOUR HONOR, IS NONE OF THAT IS  
21 SOME CLEAR DISCLAIMER OF THE SCOPE OF THE TERM "DATABASE."  
22 THEY WERE TRYING TO DISTINGUISH THE OLD CLAIM, THE DIFFERENT  
23 CLAIM IN THE '720, THE MUCH SHORTER CLAIM FROM CASSORLA, AND  
24 IT'S NOT A DISCLAIMER SAYING "DATABASE IS LIMITED TO THIS."  
25 WE'VE ALREADY SEEN, THERE IS A LOOK-UP TABLE, AND THAT'S A

1 DATABASE WITH FIELDS AND RECORDS, BUT THAT DOESN'T MEAN THAT  
2 ALL DATABASES ONLY HAVE FIELDS AND RECORDS.

3 AND SO THAT'S OUR POINT ABOUT THAT.

4 THE COURT: OKAY.

5 MR. TRIBBLE: AND THEN LIKE THE QUOTES FROM  
6 MR. YAMANAKA, AND IN THEIR BRIEF THEY HAD A QUOTE FROM  
7 MR. BOOKMAN, THOSE SIMILARLY ARE NOT CLEAR DISCLAIMERS.

8 IF YOU LOOK, AS HE EXPLAINED IN THE SECOND HIGHLIGHTED  
9 QUOTE, HE SAID "WE IMPORTED INTO OUR DATABASE FORMAT," OKAY?

10 SO IN THE PREFERRED EMBODIMENT, YOU KNOW, THEY DID TAKE  
11 THE DATA AND THEY PUT IT IN THEIR SPECIALIZED DATABASE FORMAT.  
12 AGAIN, THAT'S NOT A DISCLAIMER AS TO WHAT THE TERM "DATABASE"  
13 MEANS.

14 SO AT THE END OF THE DAY, WE'RE LEFT WITH THESE CLAIMS  
15 THAT ARE EXAMINED BY THE PATENT AND TRADEMARK OFFICE AND THAT,  
16 YOU KNOW, SAY, YOU KNOW, YOU START WITH THE SOURCE MATERIAL  
17 STORED IN A DATABASE AND DEPENDING ON WHAT FIELDS AND RECORDS  
18 MEAN, YOU KNOW, BECAUSE THE TEXT FILE, YOU CAN THINK OF IT AS,  
19 YOU KNOW, A TERM OR A PARAGRAPH MIGHT BE THE RECORD AND THE  
20 SPACES DELIMITS THE FIELDS OF DIFFERENT WORDS, OKAY, IF THAT'S  
21 WHAT IT MEANS, FIELDS AND RECORDS WOULD BE FINE.

22 BUT OTHERWISE, IF IT'S SOMETHING NARROWER THAN THAT, WHICH  
23 IS CLEARLY WHERE MICROSOFT IS HEADED WITH THIS AS WE SAW FROM  
24 THEIR GRADE, PUPIL, DATE EXAMPLE OF A TEXT FILE, AND EVEN THEN,  
25 THEY HEDGED ON WHETHER THAT WOULD BE A DATABASE. THEY KIND OF

1 SAID IT WOULD BE LIKE A DATABASE.

2 YOU KNOW, THEN IF THAT IS THE CASE, IT WOULD EXCLUDE THE  
3 PREFERRED EMBODIMENT.

4 THE COURT: ALL RIGHT. THANK YOU, MR. TRIBBLE.

5 MR. LAMBERSON, ANY LAST WORD ON THIS OR SHALL WE TURN TO  
6 THE NEXT TERM?

7 MR. LAMBERSON: I THINK JUST ON THE EXCLUDING  
8 PREFERRED EMBODIMENT POINT, YOUR HONOR --

9 THE COURT: SURE.

10 MR. LAMBERSON: -- I DON'T BELIEVE WE ARE -- THE  
11 CLAIM TALKS ABOUT -- THE FIRST LIMITATION REALLY IS STORING THE  
12 SOURCE MATERIAL IN THE DATABASE, SO YOU HAVE THE SOURCE  
13 MATERIAL, THEN YOU PUT IT IN THE DATABASE.

14 WE'RE SAYING THOSE ARE TWO DIFFERENT THINGS, THE SOURCE  
15 MATERIAL AND THE DATABASE.

16 THEY'RE BASICALLY ACCUSING THE SOURCE MATERIAL NOW AS  
17 BEING THE DATABASE. THEY'RE SAYING THE WORD FILE -- THE WORD,  
18 MICROSOFT WORD DOCUMENT IS THE DATABASE.

19 WE'RE NOT EXCLUDING ANYTHING. YOU HAVE TO PUT IT INTO A  
20 DATABASE AND THE DATABASE HAS TO BE SOMETHING DIFFERENT THAN  
21 THE SOURCE DATA.

22 AND THEN JUST ONE OTHER POINT ON THE PROSECUTION HISTORY,  
23 YOUR HONOR. I JUST WANT TO MAKE SURE THE COURT'S LOOKING AT  
24 THE RIGHT SPOT.

25 MR. TRIBBLE WAS FOCUSING ON CLAIM 1. REALLY THE COURT

1 SHOULD LOOK AT CLAIM 8, WHICH IS WHAT'S ASSERTED HERE.

2 THE COURT: I APOLOGIZE. WE'RE TALKING ABOUT THE  
3 '731, CLAIM 8?

4 MR. LAMBERSON: YES, WHICH BECAME -- AT THIS POINT IT  
5 WAS THE '720, CLAIM 8, BUT THE NUMBERING REMAINS THE SAME. SO  
6 THIS BECAME THE '731, CLAIM 8, NOT CLAIM 1.

7 AND THE ONLY THING ADDED HERE IS "ADDRESS STORED IN  
8 ELECTRONIC DATABASE." THERE'S NOTHING ABOUT TAGS BEING FIXED  
9 OR NOT. THAT'S WHAT WAS ADDED AND THAT'S WHAT WE HAVE TO  
10 UNDERSTAND, YOU KNOW, WHAT WERE THEY TRYING TO DISTINGUISH?

11 AND I AGREE IT GOES TO BOTH THE DATABASE AND POTENTIALLY  
12 THE LINKING PIECE OF IT, BUT WE DO THINK THIS DATABASE  
13 STRUCTURE WAS PART OF WHAT THEY HAD TO ADD TO GET AROUND THE  
14 PRIOR ART, AND THAT'S THE ONLY POINT.

15 THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU.

17 MR. TRIBBLE: YOUR HONOR, JUST ON THAT POINT.

18 THE COURT: SURE.

19 MR. TRIBBLE: JUST TO BE CLEAR -- AND HE'S CORRECT, I  
20 SHOULD HAVE PUT UP CLAIM 8 -- BUT IT HAS ALL THE OTHER ENTRIES  
21 FOR ADDRESS, JUST LIKE CLAIM 1. IT'S REALLY THE SAME ARGUMENT.

22 AND THE ONLY OTHER THING I WOULD SAY ABOUT IT IS THAT IT  
23 DOES TALK ABOUT TAGS AND TAGLESS AND EVERYTHING, BUT THAT'S THE  
24 POINT IS I THINK WHEN THEY AMENDED THAT, THEY WERE CLEARLY  
25 TRYING TO EMPHASIZE THAT WE HAVE THIS LOOK-UP TABLE WITH

1 STARTING AND ENDING ADDRESSES -- WHICH BY THE WAY, CASSORLA,  
2 YOU'RE CORRECT, YOUR HONOR, WE'RE NOT CONTENDING THAT THOSE ARE  
3 NOT DATABASES, THOSE TWO TABLES THAT WERE SHOWN ON THAT.

4 BUT THE -- AND SO THE DATABASE WAS NOTHING -- THAT WAS NOT  
5 BEING ADDED TO DISTINGUISH ANYTHING. IT WAS POINTING OUT THAT  
6 OUR METHOD OF CUTTING IT AND HAVING THESE JUST STARTING AND  
7 ENDING ADDRESSES AND THEN THAT LINKS TO AN EXTERNAL RESOURCE,  
8 THAT'S WHAT'S DIFFERENT.

9 THE COURT: THAT'S THE DISTINCTION. ALL RIGHT.

10 WHY DON'T WE TURN TO "LINKING" IF WE COULD?

11 MR. TRIBBLE: OKAY. ON THIS ONE, I HAVE A BIT OF AN  
12 UPDATE. YOU KNOW, WE FILED OUR INITIAL STATEMENT OF WHAT THE  
13 CONSTRUCTIONS WERE AND EVERYTHING, AND THROUGH THE BRIEFING IT  
14 HAS EVOLVED A LITTLE BIT AND SO I WANT TO WALK YOU THROUGH  
15 THIS.

16 AND THESE ARE THE FIRST TWO LINKED TERMS. THERE ARE SOME  
17 OTHER ONES THAT FOLLOW ON FROM THIS THAT I THINK THE DECISION  
18 ON THIS WILL DECIDE THOSE, AND SO BASICALLY HERE ARE THE TWO  
19 CONSTRUCTIONS.

20 THE MICROSOFT CONSTRUCTION ORIGINALLY HAD "IN A RECORD  
21 THAT IS DIFFERENT FROM THE ORIGINATING RECORD." IN THEIR  
22 BRIEFING, THEY AGREED TO DROP THAT PART, AND SO THAT'S WHY  
23 WE'VE MARKED THAT OUT AND GREYED IT. OKAY?

24 AND SO THEN WE'RE LOOKING AT THE DIFFERENCE BETWEEN OUR  
25 PROPOSED CONSTRUCTION AND THEIR PROPOSED CONSTRUCTION, AND WE

1 REALLY DECIDED THAT THEY'RE VERY CLOSE AND IT -- AND IT ALL  
2 DEPENDS ON WHAT "POINTER" MEANS.

3 SO AT END OF THE DAY, IN OUR REPLY BRIEF, WE SAID, "LOOK,  
4 WE'RE FINE WITH THEIR CONSTRUCTION, JUST REPLACE THE WORD  
5 'POINTER' WITH 'REFERENCE.'"

6 AND SO THAT'S THE SINGLE POINT OF DIFFERENCE, I BELIEVE,  
7 AS IT STANDS NOW.

8 THE COURT: I APPRECIATE THAT CLARIFICATION. I WAS  
9 TRYING TO PUT ALL THIS TOGETHER MYSELF AND I WASN'T DOING A  
10 VERY GOOD JOB.

11 MR. TRIBBLE: I APOLOGIZE. THE WAY THE BRIEFING WAS  
12 DONE, BOTH SIDES, THEY WOULD MAKE THEIR ARGUMENT, AND THEN IN  
13 THE LAST SENTENCE OF EACH SECTION WOULD SAY, "OH, AND BY THE  
14 WAY, WE'RE FINE WITH THIS." SO WE'LL TRY TO DO THAT  
15 DIFFERENTLY FROM NOW ON, YOUR HONOR.

16 AND SO THIS "USING REFERENCE," THIS CONSTRUCTION BASICALLY  
17 COMES AGAIN FROM JUDGE ARMSTRONG'S OPINION IN THE FLYSWAT CASE,  
18 AND OUR PROPOSED DEFINITION, I THINK, IS IDENTICAL. IT'S  
19 "REFERRING" -- OR NOW WE SAY "A REFERENCE," BUT IT'S REFERRING  
20 "TO DATA OR INFORMATION OR THE LOCATION OF DATA OR  
21 INFORMATION."

22 AND JUDGE ARMSTRONG FOUND THAT THAT FALLS WITHIN THE  
23 MEANING OF THE TERM "LINKING."

24 AND IN FACT, THAT'S WHERE MICROSOFT GOT THEIR PROPOSAL.  
25 THEY JUST REPLACED "REFERRING" WITH "POINTER."



1 AND SO THE ISSUE IS, ARE LINKS LIMITED TO POINTERS?

2 IT KIND OF DEPENDS ON WHAT "POINTER" MEANS. OUR REAL  
3 ISSUE WITH "POINTER" IS IT'S -- THE TERM IS USED, I BELIEVE,  
4 ONCE IN THE '731 IN THE SPEC TO REFER TO HYPERLINKS. IT  
5 SAYS -- WHEN IT WAS SAYING HERE IS THE PRIOR ART, YOU KNOW,  
6 THAT WE'RE GOING TO BE DIFFERENT FROM, AND IT SAYS HYPERLINKS  
7 WERE A SIMPLE TYPE OF POINTER, AND THERE'S A STATEMENT IN THE  
8 FILE HISTORY REFERRING TO A POINTER.

9 POINTERS ARE FINE, AS LONG AS WE ALL AGREE ON WHAT A  
10 POINTER IS. I MEAN, OBVIOUSLY TO US A POINTER IS A REFERENCE.

11 MICROSOFT SAYS, YOU KNOW, ON ONE EXTREME, A POINTER WOULD  
12 BE AN ADDRESS, A SPECIFIC ADDRESS.

13 BUT I THINK MICROSOFT SAYS IN THEIR BRIEF THAT "POINTER"  
14 SPECIFIES THE PLACE OR LOCATION OF THE DATA, AND I CAN POINT TO  
15 THAT IN THE BRIEF IF THERE'S ANY DISPUTE ABOUT THAT.

16 BUT I JUST WANT TO POINT OUT THAT IF YOU -- IF THAT'S WHAT  
17 "POINTER" MEANS, IF YOU REPLACED "POINTER" WITH "LOCATION" --

18 THE COURT: WE'VE ALREADY KIND OF GOT THAT COVERED  
19 ELSEWHERE IN THE CONSTRUCTION, RIGHT?

20 MR. TRIBBLE: IT WOULDN'T MAKE ANY SENSE, OKAY? IT  
21 WOULD SAY "THE LOCATION OF THE LOCATION OF THE DATA." THAT'S  
22 WHY WE THINK IT'S TOO NARROW.

23 AND SO WE LIKE THE STATEMENT FROM JUDGE ARMSTRONG, AND SO  
24 WE POINTED OUT IN THE SPEC, IT SAYS "THE NUMBER AND TYPE OF  
25 LINKS FOR ANY COMPONENT IS DYNAMIC."

1           NOW, I DON'T WANT TO -- I WANT TO BE CLEAR, WHEN IT SAYS  
2       "TYPE OF LINKS," IT SAYS "THAT MEANS A SINGLE ENTRY COULD HAVE  
3       SEVERAL DIFFERENT REFERENCES ATTACHED TO IT, EACH CONTAINING  
4       DIFFERENT FORMS OF DATA."

5           BUT THE POINT IS SINCE THE EXTERNAL RESOURCES COULD BE  
6       SOUND, AUDIO --

7           THE COURT: VIDEO, YEAH.

8           MR. TRIBBLE: -- ET CETERA, THE LINKS COULD TAKE  
9       DIFFERENT FORMATS.

10          AND LET'S SKIP OVER THAT.

11          LET'S GO TO THE IBM DICTIONARY OF COMPUTING. YOU KNOW,  
12       THERE ARE ASSOCIATIONS BETWEEN TWO DIFFERENT INFORMATION NODES,  
13       SO REFERENCE ASSOCIATION.

14          AND I WANTED TO POINT OUT THIS JUST TO SHOW THAT --  
15       BECAUSE THERE'S A REFERENCE IN THE SPEC TO DIRECTLY LINKING,  
16       WHICH IMPLIES THAT LINKING CAN ALSO BE DONE INDIRECTLY, AND SO  
17       I WANT TO POINT OUT THAT IN THE PREFERRED EMBODIMENT, WE HAVE  
18       THIS LOOK-UP TABLE IN FIGURE 2, AND IT'S GOT THE START AND END  
19       ADDRESSES OF EACH OF THE DISCRETE PIECES. OKAY?

20          AND THEN IT HAS LINK, AND THAT WHOLE COLUMN IS LINK, BUT  
21       I'VE HIGHLIGHTED IN YELLOW THE TEXT, PICT, AND SO ON BECAUSE I  
22       WANT TO POINT OUT, THE LINK IN THAT CASE, FIRST IT TELLS YOU  
23       LIKE, YOU KNOW, GO TO THE TEXT DICTIONARY OR THE PICTURE  
24       DATABASE OR TEXT DATABASE AND SO ON, AND IN THE PREFERRED  
25       EMBODIMENT, IT THEN GIVES YOU FURTHER INFORMATION.

1 BUT IF YOU LOOK AT WHAT I'VE DESCRIBED IN STEP 203, THE  
2 OFFSET IS WHERE YOU CLICK, THAT TELLS YOU WHAT PIECE, WHAT YOUR  
3 OFFSET IS IN THE MATERIAL FROM WHERE YOU CLICKED. AND SO IN  
4 203, IT SAYS THAT OFFSET, WHERE YOU CLICKED, IS LINKED TO TEXT.

5 AND THEN IT SAYS, "LOOK UP TEXT AT INDEX 200." IN OTHER  
6 WORDS --

7 THE COURT: SO THAT'S THE INDIRECT.

8 MR. TRIBBLE: THAT'S THE INDIRECT, THAT THERE'S  
9 FURTHER PROCESSING BEING DONE IN THE PREFERRED EMBODIMENT. IT  
10 SAYS FIRST GO TO THE TEXT DICTIONARY, THEN THERE'S FURTHER  
11 PROCESSING TO GO SEE WHAT ENTRY CORRESPONDS TO THE NUMBER 200,  
12 AND THAT'S WHERE IT PULLS UP THE WORD JAPANESE ECONOMY. OKAY?

13 AND SO I JUST WANTED THIS IDEA OF -- BECAUSE I THINK, YOU  
14 KNOW, WHEN -- IT'S JUST A ONE SENTENCE STATEMENT IN THEIR BRIEF  
15 WHEN THEY SAY A POINTER IS THE LOCATION OR PLACE. I THINK THEY  
16 MAY SAY PLACE OF THE DATA.

17 YOU KNOW, IT IMPLIES THAT THIS IS A, AN ADDRESS OR  
18 SOMETHING LIKE THAT. IT TELLS YOU EXACTLY WHERE IT GOES.

19 AND IN THE PREFERRED EMBODIMENT, THERE'S FURTHER  
20 PROCESSING. YOU KNOW, IT REFERS YOU TO THE TEXT DICTIONARY AND  
21 IT HAS THE, THE ALGORITHMS IN IT OR THE PROCESSING POWER,  
22 YOU'LL FIND THE CORRESPONDING ONE.

23 THE COURT: IT'S A TWO-STEP.

24 MR. TRIBBLE: A TWO-STEP, YES, YOUR HONOR. THAT'S A  
25 GOOD WAY OF SAYING IT.

1 SO AGAIN WE HAVE A CLAIM DIFFERENTIATION ARGUMENT WHERE  
2 THE LINK, IT CAN BE A HYPERLINK, THE LINK CAN BE AN ADDRESS,  
3 BUT THE LINK CAN ALSO BE REFERENCE INFORMATION FOR RETRIEVING  
4 THE SELECTED MATERIALS, OKAY?

5 AND SO, YOU KNOW, THAT'S AS FAR AWAY AS YOU CAN GET. AS  
6 LONG AS IT'S REFERENCE INFORMATION THAT ALLOWS THE SOFTWARE TO  
7 RETRIEVE THE CORRECT EXTERNAL REFERENCE MATERIAL, THAT'S A  
8 LINK.

9 THANK YOU.

10 THE COURT: THANK YOU, MR. TRIBBLE.

11 MR. LAMBERSON.

12 MR. LAMBERSON, I JUST WANT TO BEGIN BY ASKING ON THIS  
13 POINT, ARE YOU IN AGREEMENT THAT WE ARE AT A PLACE WHERE THE  
14 DIFFERENCE BETWEEN THE PARTIES IS "POINTER" VERSUS "REFERENCE"?  
15 OR DO YOU HAVE A DIFFERENT VIEW?

16 MR. LAMBERSON: I BELIEVE THAT'S RIGHT, YOUR HONOR.

17 I DO AGREE.

18 THE COURT: OKAY. WHY DON'T YOU GO AHEAD AND TELL ME  
19 WHY "POINTER" IS THE WAY TO GO?

20 MR. LAMBERSON: AND ONE THING I SHOULD SAY, YOUR  
21 HONOR. WE DIDN'T JUST CHOP OFF THE END OF OUR CONSTRUCTION.  
22 WE REPLACED -- THEY DIDN'T LIKE THE WORD "RECORD." WE REPLACED  
23 IT IN THEIR DEFINITION FOR EXTERNAL CONTENT, WHICH IS  
24 "INFORMATION THAT IS EXTERNAL TO THE SOURCE MATERIAL."

25 THE COURT: THAT'S THEIR --

1 MR. LAMBERSON: IT'S FROM FLYSWAT.

2 MR. TRIBBLE: OH, FAIR ENOUGH.

3 THE COURT: YEAH.

4 MR. LAMBERSON: SO I DON'T THINK THAT'S A DISPUTE.

5 WE'RE JUST TALKING ABOUT -- AND WHAT WE'VE DONE HERE, WE'VE PUT  
6 THE CLAIM LANGUAGE ON THE LEFT. THIS IS CLAIM 8 FROM THE '731.

7 JUST TO HIGHLIGHT WHAT WE'RE TALKING ABOUT HERE, WE'RE  
8 TALKING ABOUT A PART OF THE LOOK-UP TABLE. SO THE LOOK-UP  
9 TABLE HAS THREE THINGS. IT HAS STARTING ADDRESSES, ENDING  
10 ADDRESSES, AND A LINK TO THE EXTERNAL REFERENCE MATERIAL.

11 AND AS -- IT'S SIMILAR IN THE LATER PATENTS. YOU HAVE  
12 THESE DATABASES THAT ARE SYNDICATED, AND THEN YOU HAVE THESE  
13 LINKS THAT ARE USED TO LINK A TERM FROM THE DOCUMENT TO THE  
14 IDENTIFYING CONTENT.

15 THE COURT: CAN WE JUST GO BACK --

16 MR. LAMBERSON: YEAH.

17 THE COURT: -- AND I PROBABLY SHOULD HAVE ASKED THIS  
18 QUESTION 20 MINUTES AGO.

19 WHEN WE'RE TALKING HERE IN THE CLAIM TERM ABOUT STARTING  
20 ADDRESSES, FOR EXAMPLE, AND I DON'T BELIEVE THAT'S A -- MAYBE I  
21 OVERLOOKED IT.

22 MR. LAMBERSON: NOT IN DISPUTE.

23 THE COURT: NOT IN DISPUTE, OKAY. EVEN BETTER.

24 DOES THE STARTING ADDRESS REFER SPECIFICALLY TO THE  
25 INITIAL CUT OR THE STARTING CUT ON THE FILE? OR AM I JUST

1 MISCONSTRUING A BUNCH OF DIFFERENT CONCEPTS HERE?

2 MR. LAMBERSON: THERE'S TWO CONCEPTS, YOUR HONOR.

3 THERE'S THE BEGINNING POSITION ADDRESS, WHICH WOULD BE SORT OF  
4 POSITION 0.

5 THE COURT: OKAY.

6 MR. LAMBERSON: THAT WOULD BE SORT OF YOUR FIRST --  
7 WHEN YOU START CUTTING, THAT WOULD BE SORT OF THE FIRST  
8 ADDRESS.

9 THE COURT: OKAY.

10 MR. LAMBERSON: AND THEN ALL YOUR OTHER ADDRESSES GO  
11 ON FROM THERE. SO YOUR FIRST WORD MIGHT BE FROM 0 TO 5, YOUR  
12 NEXT WORD FROM 6 TO 10, AND SO ON AND SO ON.

13 THE COURT: OKAY.

14 MR. LAMBERSON: SO THIS TABLE -- WHEN WE TALK ABOUT  
15 THE STARTING AND ENDING ADDRESSES, THOSE ARE ADDRESSES FOR ONE  
16 OF THE CUT PIECES AND THEY ARE AN OFFSET FROM THE START OF THE  
17 FILE.

18 THE COURT: OKAY.

19 MR. LAMBERSON: SO THIS WOULD BE THE 5 TO 10.

20 THE COURT: OKAY.

21 MR. LAMBERSON: AND WE'LL GET TO SOME GRAPHICS WITH  
22 THAT AS WELL.

23 BUT, YOUR HONOR, I WANT TO GIVE YOU A LITTLE MORE  
24 BACKGROUND HERE.

25 THE COURT: GO AHEAD.

1 MR. LAMBERSON: BECAUSE I THINK THAT THIS -- THIS IS  
2 AN EXAMPLE WHERE BOTH PARTIES REALLY AGREE HOW THE ACCUSED  
3 PRODUCT WORKS, AND REALLY THE ONLY DISPUTE IS ONE OF CLAIM  
4 SCOPE. IS IT A LINK OR IS IT NOT?

5 AND YOU MAY HAVE SEEN IN SENTIUS' TECHNICAL TUTORIAL, THEY  
6 HAD A LOT OF PICTURES OF TABLES THAT WERE NOT DRAWN FROM THE  
7 PATENT, AND THE REASON THEY DID THAT, PRETTY STRAIGHTFORWARD,  
8 THEY WERE TRYING TO MAKE SOMETHING THAT LOOKED LIKE WHAT WORD  
9 DOES.

10 SO I'D LIKE TO GIVE YOU A LITTLE MORE EXPLANATION FOR WHAT  
11 WORD DOES AND YOU CAN UNDERSTAND WHAT THEY ARE CALLING A LINK  
12 AND WHY WE DON'T BELIEVE IT'S A LINK.

13 SO IT'S ACTUALLY FAIRLY STRAIGHTFORWARD. WORD CREATES  
14 TABLES FOR BACKGROUND SPELL CHECKING THAT HAVE THE START OF A  
15 RUN OF TEXT, AND THEN IF THEY CHECK IT, THEY FLAG IT AS  
16 CHECKED. SO THIS IS A FLAG, A 0 OR A 1, HAVE I CHECKED IT OR  
17 NOT; AND THEN THEY HAVE A FLAG, IS IT MISSPELLED OR NOT? THERE  
18 WILL BE AN ADDITIONAL FLAG, IS THERE A GRAMMAR ERROR OR NOT?

19 THE COURT: OKAY. LET ME STOP YOU THERE BECAUSE THIS  
20 IS HELPFUL.

21 MR. LAMBERSON: UM-HUM.

22 THE COURT: THIS IS ONE OF THE BACKGROUND QUESTIONS I  
23 WANTED TO GET TO THAT I MENTIONED EARLIER.

24 SO WALK ME THROUGH THIS EXAMPLE IN A LITTLE MORE DETAIL.  
25 SO AS I UNDERSTAND IT, THE USER IS ENTERING THE TEXT THAT YOU

1 SEE HERE ON SLIDE 32, THE QUICK BROWN FOX JUMPS OVER THE LAZY  
2 DOG.

3 MR. LAMBERSON: RIGHT.

4 THE COURT: AS THE USER IS ENTERING THAT TEXT INTO  
5 THE EDITOR, IN THIS CASE WORD --

6 MR. LAMBERSON: RIGHT.

7 THE COURT: -- YOU'RE TELLING ME THAT THE -- IN THE  
8 BACKGROUND, THERE IS THIS TABLE BEING ASSEMBLED IN REAL TIME?

9 MR. LAMBERSON: RIGHT.

10 THE COURT: OKAY. AND AS I UNDERSTAND THE ACCUSED  
11 PROCESS, OR PRODUCT HERE, THE -- WHAT'S REALLY BEING FOCUSSED  
12 ON OR TARGETED IS THE REAL TIME LIVE CHECKING ELEMENT OF ALL OF  
13 THIS.

14 NOW, WHEN YOU SAY THAT THERE'S A BIT -- AN INITIAL RECORD  
15 CREATED WHERE THE FIRST FIELD IS THE BEGINNING ADDRESS AND THE  
16 SECOND FIELD IS CHECKED, IS THE CHECKED FIELD OF THE RECORD  
17 MARKED POSITIVE, OR 1, WHEN THE PROCESS HAS BASICALLY  
18 COMPLETED? OR IN OTHER WORDS --

19 MR. LAMBERSON: NO.

20 THE COURT: OKAY. SO WHERE AM I GETTING THAT WRONG?

21 MR. LAMBERSON: YOU KNOW WHAT? I EVEN HAVE SOME  
22 ANIMATIONS. SENTIUS HAS SEEN THESE BEFORE, SO I DON'T THINK  
23 I'M SURPRISING ANYBODY.

24 ARE YOU ALL RIGHT IF I USE THE ANIMATION?

25 MR. TRIBBLE: SURE.



1 MR. LAMBERSON: ALL RIGHT. HOPEFULLY I CAN GET THESE  
2 TO RUN.

3 THE COURT: OKAY.

4 MR. LAMBERSON: SO AS YOU'RE TYPING, YOU CREATE THIS  
5 TABLE DYNAMICALLY IN THE BACKGROUND. EACH TIME YOU TYPE A  
6 WORD, IT'S GOING TO RUN A CHECK ON IT AND IT'S GOING TO SEE, IS  
7 IT IN THE DICTIONARY OR NOT? AND IF IT'S NOT, IT'S FLAGGED AS  
8 CHECKED AFTER YOU TYPE THE WORD AND IT SAYS IT'S NOT  
9 MISSPELLED.

10 THE COURT: OKAY.

11 MR. LAMBERSON: AND AT THAT POINT YOU CAN KEEP  
12 TYPING -- LET'S SEE, IF I CAN KEEP TYPING -- AND IT'LL KEEP  
13 CHECKING AS YOU TYPE, AND IT'LL ONLY MARK A NEW REGION ONCE YOU  
14 GET TO A WORD THAT IS MISSPELLED. IF YOU TYPE THE WHOLE THING  
15 CORRECTLY, YOU'RE ONLY GOING TO HAVE ONE ENTRY AND IT'S GOING  
16 TO SAY EVERYTHING IS FINE.

17 THE COURT: AH, OKAY. OKAY. AND SO IT'S ONLY -- AND  
18 THIS GETS TO MY QUESTION. SO IT'S ONLY WHEN THERE IS AN ERROR  
19 OR A MISSPELLING THAT YOU HAVE MULTIPLE ENTRIES IN THAT TABLE  
20 THAT'S BEING BUILT?

21 MR. LAMBERSON: THAT IS ACCURATE, YOUR HONOR, I --  
22 YES.

23 THE COURT: OKAY.

24 MR. LAMBERSON: AND THAT'S ALL IT DOES. I MEAN, YOU  
25 CAN KEEP TYPING. IT'LL CHECK THE NEXT REGION AND IT'LL MARK

1        THAT AS CORRECT.

2                SO ALL THAT WORD KNOWS AT THIS POINT IS THAT SOMETHING IS  
3        MISPELLED. IT DOES NOT KNOW WHAT THE CORRECT SPELLING IS. IT  
4        DOES NOT KNOW WHETHER THERE IS A CORRECT SPELLING. IT DOES NOT  
5        KNOW WHERE THE CORRECT SPELLING IS.

6                AND YOU MAY ASK, WELL, WHY? WHY DOESN'T IT JUST PUT IN  
7        THIS TABLE WHAT THE CORRECT SPELLING IS? NUMBER ONE, PEOPLE  
8        OFTEN DON'T CORRECT THE MISPELLINGS. WHENEVER I TYPE  
9        "SENTIUS" IN A BRIEF, IT'S UNDERLINED. AND GUESS WHAT? I  
10       DON'T DO ANYTHING WITH THAT. I LEAVE IT THERE UNDERLINED. SO  
11       YOU MAY NOT NEED THE CORRECT SPELLING.

12               OR, ALTERNATIVELY, THERE MAY BE MULTIPLE POTENTIAL CORRECT  
13       SPELLINGS. WORD DOESN'T KNOW WHICH ONE IS THE ABSOLUTE CORRECT  
14       SPELLING. IT'S NOT THAT SMART YET.

15               SO WHAT IT DOES IS IT LEAVES IT FOR LATER. AND LATER, IF  
16       SOMEBODY WERE TO COME ALONG AND RIGHT CLICK, WORD WOULD SEND  
17       THE WORD THEY CLICKED ON OUT TO THE DICTIONARY, SAY TAKE A LOOK  
18       AT THIS AND PLEASE SEND ME BACK A LIST OF CORRECTIONS.

19               THE COURT: RIGHT. WHERE THERE ARE MULTIPLE OPTIONS,  
20       IT WILL PRESENT THOSE OPTIONS AND THE USER MAKES A SELECTION.

21               MR. LAMBERSON: THAT'S RIGHT. BUT THAT'S ALL DONE  
22       LATER. THAT IS NOT DONE THROUGH THIS TABLE.

23               AND SO THE KEY DISPUTE HERE, YOUR HONOR, IS, IS THIS FLAG  
24       SAYING THAT IT'S MISPELLED, AND THERE WILL BE ANOTHER ONE THAT  
25       SAYS THERE'S A GRAMMAR ERROR, IS THAT A LINK TO ANYTHING?

1 WE BELIEVE IT'S NOT. SENTIUS BELIEVES IT IS. THAT IS THE  
2 CRUCIAL ISSUE IN THIS CASE, AND THAT IS WHY THERE'S A DISPUTE  
3 ABOUT "LINK."

4 YOU KNOW, AN ANALOGY MIGHT BE IF I GAVE YOUR HONOR A PIECE  
5 OF PAPER WITH A WORD ON IT AND I SAID "THIS WORD IS  
6 MISSPELLED," YOU COULD ASK ME, "HOW DO YOU SPELL IT?" "I DON'T  
7 KNOW. SORRY."

8 NOW, YOU MAY KNOW, "I'VE GOT A DICTIONARY IN MY OFFICE.  
9 I'LL GO LOOK THERE. OR I'LL SEARCH ON-LINE USING MY FAVORITE  
10 SEARCH ENGINE."

11 BUT I DIDN'T GIVE IT TO YOU, AND THIS TABLE DOESN'T GIVE  
12 YOU THAT ANSWER.

13 SO THE QUESTION IS, HOW BROADLY DO WE READ "LINK"? DO WE  
14 SAY THAT FLAGGING IS MISSPELLED -- IS A LINK OR NOT?

15 SO GOING BACK TO THE SLIDES, YOU KNOW -- WELL, FIRST OF  
16 ALL, LET'S UNDERSTAND WHAT THIS LINK REALLY IS IN THE PATENTS.  
17 I THINK WE ALL DO UNDERSTAND IT. IN THE '731 CLAIMS, THE LINK  
18 IS WHAT YOU USE TO GET THE EXTERNAL MATERIAL AND THEN DISPLAY  
19 IT TO THE USER. IT'S THAT SIMPLE.

20 AND IN THE LATER TWO PATENTS, THEY BASICALLY JUST REFER  
21 BACK TO THE '720 PATENT, WHICH BECAME THE RE-ISSUED PATENT, FOR  
22 HOW THIS WHOLE RICHLINK PROCESSOR OPERATES. SO THEY BASICALLY  
23 HAVE THE SAME DISCLOSURE. THERE'S NOTHING NEW.

24 SO WE'RE TALKING ABOUT A LOOK-UP TABLE WITH A LINK AND THE  
25 LINK IS WHAT YOU USE TO GET THE MATERIAL.

1           AND SENTIUS DESCRIBED IT PRETTY SIMPLY IN THE PRIOR CASE.  
2           THEY SAID THE LOOK-UP TABLE IS WHERE YOU GO TO FIND AN OUTPUT  
3           VALUE THAT CORRESPONDS TO AN INPUT VALUE. THE OUTPUT VALUE IS  
4           EXTERNAL REFERENCE MATERIAL.

5           SO THAT'S WHAT WE BELIEVE WE'RE TALKING ABOUT WHEN WE'RE  
6           TALKING ABOUT A LINK. YOU GO TO THIS TABLE AND IT'S GOT TO  
7           TELL YOU HOW TO GET THAT EXTERNAL REFERENCE MATERIAL. IT CAN'T  
8           JUST TELL YOU, "OH, YOU BETTER GO FIND IT. GO COMB THROUGH  
9           YOUR DICTIONARY AND FIND IT."

10          WE DON'T BELIEVE THAT'S ENOUGH. THAT'S WHY WE WORRY ABOUT  
11          THIS WORD "REFERENCE TO." IS THAT A REFERENCE TO THE FACT THAT  
12          IT'S MISSPELLED? YES.

13          IS IT FLAGGING FOR SOMEBODY THAT MAYBE LATER ON YOU SHOULD  
14          GO LOOK IT UP? YES.

15          DOES IT POINT TO THE CORRECT SPELLING? NO.

16          DOES IT POINT TO ANYTHING AT ALL? NO.

17          WHY DID WE CHOOSE "POINTER"? WELL, WE CHOSE "POINTER"  
18          PRIMARILY BECAUSE IT'S A WORD THAT EVERYBODY IN THE ORIGINAL  
19          FLYSWAT LITIGATION, INCLUDING SENTIUS, SEEMED PERFECTLY  
20          COMFORTABLE WITH.

21          THIS IS AGAIN FROM SENTIUS' BRIEFING. NOW, THEY DID USE  
22          THE WORD "REFERRING TO," BUT ALL THE DICTIONARY DEFINITIONS  
23          THEY GAVE IN THAT CASE USED THE WORD "POINTER."

24          AND WHEN THE COURT -- JUST TO BE CLEAR, THE COURT DID NOT  
25          ADOPT SENTIUS', THIS PROPOSAL DEFINITION WITH "REFERRING," AND

1 I HEARD SOMETHING THAT SORT OF SUGGESTED THAT, BUT THAT'S NOT  
2 THE ULTIMATE CONSTRUCTION.

3 NOW, THE COURT DID AGREE THAT THAT'S GENERALLY WHAT THE  
4 PATENT IS TALKING ABOUT.

5 BUT WHAT ELSE DID THE COURT SAY? THE PATENT ALSO AGREED  
6 THAT WE'RE ALSO TALKING ABOUT A POINTER, AND "THIS USE OF  
7 'LINKING' FALLS SQUARELY WITHIN SENTIUS' SUGGESTED MEANING OF A  
8 POINTER."

9 SO THE COURT EVEN UNDERSTOOD THAT AT THAT TIME -- THERE  
10 WAS PROBABLY NO DISPUTE ABOUT THIS PARTICULAR ISSUE, BUT AT  
11 THAT TIME, EVERYBODY SEEMED TO UNDERSTAND, WHEN THEY'RE SAYING  
12 "REFERRING TO," WE'RE REALLY TALKING ABOUT A POINTER.

13 THE COURT: WHAT'S INTERESTING TO ME, MR. LAMBERSON,  
14 AS I WAS COMPARING SENTIUS' PROPOSED LANGUAGE TO YOURS -- AND  
15 THIS WAS BEFORE I APPRECIATED WHAT MR. TRIBBLE CLARIFIED  
16 EARLIER THAT THE PARTIES REALLY HAD MOVED MUCH CLOSER TO ONE  
17 ANOTHER -- HAD I BEEN PRESENTED WITH THE TWO CONSTRUCTIONS, I  
18 ALMOST WOULD HAVE GUESSED MICROSOFT WAS MORE INTERESTED IN  
19 SENTIUS' CONSTRUCTION, AND HERE'S WHY, AND I'D LIKE TO GET YOUR  
20 REACTION, IF I COULD.

21 IN THEIR ORIGINAL CONSTRUCTION, THEY TALK ABOUT "A  
22 CONNECTION," RIGHT, AND IN SOME WAYS "CONNECTIONS" AND  
23 "POINTERS" SEEM MUCH MORE ALIGNED THAN THE BROADER REFERENCE.

24 SO WHY WOULDN'T "CONNECTION" PERHAPS GET YOU WHERE YOU  
25 NEED TO BE?

1 MR. LAMBERSON: WELL, I AGREE. AND ACTUALLY WE HAVE  
2 A -- MAYBE I'LL SKIP AHEAD TO THIS.

3 SO OUR SLIDE 44, "CONNECTION" IS EITHER TOO BROAD OR TOO  
4 NARROW --

5 THE COURT: OKAY.

6 MR. LAMBERSON: -- AND IT'S HARD FOR ME TO UNDERSTAND  
7 WHICH, AND I'M THINKING NOW THAT THEY'VE GONE TO "REFERENCE,"  
8 IT'S PROBABLY TOO BROAD, BUT LET'S TALK ABOUT IT.

9 TO ME, "CONNECTION" MEANS PHYSICAL LINKAGE. WHEN I TALK  
10 ABOUT TWO THINGS BEING CONNECTED, I THINK OF A LINKAGE, A  
11 DIRECT, WHAT I CALL A DIRECT CONNECTION, OR MAYBE INDIRECT, BUT  
12 THERE HAS TO BE PHYSICAL CONNECTION.

13 YOU KNOW --

14 THE COURT: YOU'RE THINKING ABOUT THIS (INDICATING).

15 MR. LAMBERSON: THOSE ARE CONNECTED.

16 WHEN YOU THINK ABOUT IT IN THE COMPUTER CONTEXT, I  
17 WOULD -- YOU KNOW, MORE HARDWARE MAYBE. A PROCESSOR IS  
18 CONNECTED TO THE NETWORK CARD THROUGH A BUS. THERE'S AN  
19 ELECTRONIC CONNECTION.

20 SO IN THAT SENSE, IT'S TOO NARROW, AND WE'LL GO THROUGH  
21 SOME OF THE INTRINSIC RECORD, BUT CERTAINLY THE HYPERLINK AND  
22 THE REFERENCE NUMERAL EXAMPLES, THOSE ARE NOT WHAT I WOULD CALL  
23 A "CONNECTION" PERSONALLY.

24 SO I THINK IT'S A CONFUSING TERM FROM THAT RESPECT.

25 BUT THEN WE HAVE SENTIUS' REPLY BRIEF IN THE FOOTNOTE

1 WHERE THEY SAY "CONNECTION MEANS ANY ASSOCIATION BETWEEN TWO  
2 THINGS," AND I THINK THAT'S WHAT THEY'RE GETTING AT WITH  
3 "REFERENCE TO," AND IT'S WHAT THEY WERE TRYING TO GET AT  
4 THROUGH "CONNECTION," AND THAT'S WHERE WE FUNDAMENTALLY  
5 DISAGREE.

6 IF YOU HAVE TWO WEB PAGES ON THE INTERNET, ARE THOSE  
7 LINKED SIMPLY BECAUSE THEY'RE BOTH ON THE INTERNET? I DON'T  
8 BELIEVE SO. I THINK THERE HAS TO BE SOME, SOMETHING, SOME  
9 POINTER BETWEEN THE TWO.

10 YOU KNOW, IF THE WEBSITES ARE CNN AND FOX NEWS, ARE THOSE  
11 CONNECTED BECAUSE THEY'RE BOTH NEWS ORGANIZATIONS OR BECAUSE  
12 THEY BOTH -- LET'S SAY THEY BOTH HAVE THE SAME ARTICLE FROM THE  
13 ASSOCIATED PRESS. ARE THEY NOW LINKED SIMPLY BECAUSE THEY BOTH  
14 HAVE THE SAME ARTICLE? I DON'T THINK SO. I DON'T THINK ONE OF  
15 SKILL IN THE ART WOULD THINK SO.

16 THE COURT: ALL RIGHT.

17 MR. LAMBERSON: SO WHAT DOES THE INTRINSIC RECORD  
18 SHOW? WELL, WE ALL AGREE, THE INTRINSIC RECORD ONLY SHOWS ONE  
19 THING, AND THAT'S THIS REFERENCE NUMERAL EMBODIMENT WHERE YOU  
20 HAVE BASICALLY AN ADDRESS, AND THE ADDRESS IS GOING TO POINT  
21 YOU TO ANOTHER, ANOTHER LOCATION IN ANOTHER TABLE POTENTIALLY,  
22 AND THAT'S GOING TO TELL YOU WHAT YOUR EXTERNAL CONTENT, WHAT  
23 YOU'RE LOOKING UP.

24 NOW, YOU KNOW, I WILL SAY, I THINK IT IS POSSIBLE ONE  
25 COULD LOOK AT THE FILE HISTORY AND SAY THAT'S ALL THIS PATENT

1 SHOULD REALLY COVER, AND I THINK WE DIDN'T FULLY APPRECIATE HOW  
2 STRONG THE '720 PROSECUTION HISTORY'S STATEMENT WAS UNTIL EVEN  
3 PREPARING FOR THE HEARING.

4 SO, YOU KNOW, MR. TRIBBLE IS RIGHT THAT THERE IS THIS WORD  
5 "ADDRESS" ADDED OVER AND OVER AND OVER AGAIN TO THE CLAIMS, AND  
6 IF THAT'S THE DISTINCTION, THEN I THINK WE MAY HAVE TO JUST SAY  
7 THAT THIS IS REALLY IT, THIS IS ALL YOU GET GIVEN THE  
8 PROSECUTION HISTORY.

9 BUT EVEN THAT REALLY DOESN'T MATTER FOR THE DISPUTE AT  
10 HAND. YOU KNOW, WE COULD POTENTIALLY -- WE HAVEN'T ADVOCATED  
11 THAT. THE COURT MAY FIND THAT, I SUPPOSE.

12 BUT IN A SENSE IT DOESN'T MATTER BECAUSE THE DISPUTE IS,  
13 YOU KNOW, CAN A FLAG BE A LINK?

14 AND FLAG IS NOT AN ADDRESS. WE ALL AGREE WITH THAT.

15 IN ANY EVENT, YOU KNOW, THERE MAY BE INDIRECT LINKS IF YOU  
16 PUT ASIDE THE PROSECUTION HISTORY STATEMENT. WE GAVE AN  
17 EXAMPLE WHERE YOU HAVE -- YOU GO TO YOUR LOOK-UP TABLE AND THAT  
18 GIVES YOU A FILE PATH. A FILE PATH IS YET ANOTHER LINK THAT  
19 TAKES YOU TO THE FILE SYSTEM AND THEN YOU FIND YOUR CONTENT.

20 THE COURT: RIGHT. BUT ISN'T THE POINT THAT BEFORE  
21 YOU GET TO THE FILE PATH IN THE LOOK-UP TABLE, THERE'S AN  
22 INTERMEDIATE STEP?

23 MR. LAMBERSON: THAT'S RIGHT. AND YOU COULD HAVE  
24 MULTIPLES. I MEAN, WE CAN DRAW IT OUT. YOU COULD HAVE ADDRESS  
25 100 POINT YOU TO ADDRESS 200, 200 TO 400, 400 TO 600, AND THEN



1       YOU GET TO YOUR EXTERNAL CONTENT.

2               BUT THE POINT IS, EACH STEP ALONG THE WAY HAS TO MOVE YOU  
3 FORWARD. IT CAN'T JUST SAY --

4               THE COURT: IT'S OUT THERE.

5               MR. LAMBERSON: YOU CAN'T GET TO A POINT WHERE IT  
6 SAYS, "IT'S OUT THERE SOMEWHERE. GO LOOK HARDER. HOPEFULLY  
7 YOU'LL FIND IT." THAT'S NOT A LINK.

8               THE DISPUTE IS NOT DIRECT/INDIRECT. THAT HAS NEVER BEEN  
9 THE DISPUTE.

10              THE COURT: BUT YOU'RE SAYING IT WOULD BE A  
11 CONNECTION, WOULDN'T IT, IN YOUR EXAMPLE?

12              MR. LAMBERSON: IF IT WERE JUST OUT THERE?

13              THE COURT: WELL, NO. I TEND TO AGREE WITH YOU THERE  
14 THAT THE FACT THAT, "HEY, GO LOOK IN THE LIBRARY, IT'S  
15 SOMEWHERE," THAT'S NOT SUFFICIENT.

16              BUT AS I'M JUST THINKING ABOUT THE RIGHT LANGUAGE TO  
17 CAPTURE THESE POINTS, IT SEEMS TO ME THAT IF YOUR CONCERN IS  
18 YOU WANT -- EVEN IN THE INDIRECT EXAMPLE, YOU WANT TO MAKE  
19 CLEAR TO THE JURY THAT THE DATABASE IS TELLING THE APPLICATION  
20 WHERE TO GO SPECIFICALLY, EVEN IF IT HAS TO GO TO MULTIPLE  
21 DIFFERENT PLACES. "CONNECTION" WOULD SEEM TO ME TO GIVE YOU  
22 THAT SPECIFICITY OR DESTINATION THAT YOU'RE CONCERNED ABOUT.

23              MR. LAMBERSON: I WOULD AGREE WITH YOUR HONOR IN THE  
24 SENSE THAT IF YOU'RE SAYING THERE HAS TO BE SOMETHING HERE THAT  
25 IS DIRECTLY CONNECTED TO SOMETHING THERE, OR INDIRECTLY

1 CONNECTED, IN THE SENSE THAT ONE HAS TO GET YOU TO THE OTHER, I  
2 WOULD AGREE.

3 THE COURT: IT'S THE ASSOCIATION, THE LOOSER --

4 MR. LAMBERSON: "ASSOCIATION" IS TOO LOOSE.

5 THE COURT: RIGHT.

6 MR. LAMBERSON: "CONNECTION" I JUST BELIEVE IS MAYBE  
7 NOT THE RIGHT WORD, ONLY BECAUSE IN MY VIEW IT COULD EXCLUDE  
8 SOMETHING LIKE A REFERENCE, AN ADDRESS OR A REFERENCE NUMERAL,  
9 WHICH WE'RE NOT TRYING TO DO. WE DO AGREE THEY GET AT LEAST  
10 THAT MUCH, SO WE WOULDN'T WANT TO EXCLUDE THAT.

11 THAT'S WHY WE BELIEVE THE WORD "POINTER" IS A PERFECTLY  
12 GOOD USAGE IN THAT LINK OF CHAINS THAT WE BUILT.

13 THE COURT: BECAUSE IT'S DIRECTING THE APPLICATION TO  
14 THE DATA OR INFORMATION OR THE LOCATION.

15 MR. LAMBERSON: OR THE LOCATION. AND THE "OR THE  
16 LOCATION OF" IS CRITICAL THERE BECAUSE WHAT THAT GETS YOU IS  
17 INDIRECT POINTERS.

18 SO IF I HAVE A POINTER THAT TELLS ME 100 GOES TO 200, NOW  
19 I'VE GOT A POINTER TO THE LOCATION OF A NEW PIECE OF DATA. SO  
20 IT'S NOT -- YOU KNOW, AND IN A SENSE, THAT'S EVEN -- AGAIN,  
21 WE'RE GIVING THEM A VERY BROAD CLAIM SCOPE HERE BECAUSE IT  
22 REALLY DOESN'T MATTER FOR THE DISPUTE AT HAND BECAUSE OUR VIEW  
23 IS A FLAG, WHETHER IT'S A POINTER OR A CONNECTION, THAT'S NOT  
24 IT.

25 SO THE SAME THING IS TRUE FOR A HYPERLINK. THAT IS AN

1       EXAMPLE IN THE PATENT, AND A HYPERLINK HAS TO SPECIFY WHAT  
2       WEBSITE ARE YOU LINKING TO.

3               AGAIN, I WOULDN'T TYPICALLY CALL THAT A CONNECTION BETWEEN  
4       THE TWO. THE CONNECTION WOULD BE MORE OF THE PHYSICAL  
5       UNDERLYING LAYERS.

6               BUT REGARDLESS, WE DO BELIEVE IT'S A POINTER AND THE  
7       PATENT SAYS SO.

8               "POINTER" ALSO, WE WOULD JUST POINT OUT, IT'S A TERM THAT  
9       BOTH INVENTORS WERE COMFORTABLE WITH WHEN THEY WERE ASKED IN  
10      FLYSWAT ABOUT WHAT A LINK IS. THIS IS MR. BOOKMAN: "A LINK IS  
11      A POINTER IN A RECORD THAT REFERS TO THE LOCATION OF ANOTHER  
12      RECORD."

13              "SO A LINK IS A POINTER," HE'S ASKING HIM LATER, AND "I  
14      BELIEVE THAT'S SUFFICIENT, YES."

15              THE COURT: YEAH, IT'S INTERESTING. HE'S COMFORTABLE  
16      WITH BOTH "POINTER" AND "REFERENCE," RIGHT?

17              MR. LAMBERSON: THAT'S TRUE. THAT'S TRUE.  
18      ABSOLUTELY RIGHT.

19              AND I THINK IT'S ABSOLUTELY RIGHT TO SAY IN FLYSWAT, THOSE  
20      TWO -- EVERYBODY DID CONSIDER THOSE TWO EQUIVALENT. I MEAN,  
21      SENTIUS IN ITS BRIEFING USED BOTH WORDS INTERCHANGEABLY. THE  
22      COURT USED BOTH WORDS INTERCHANGEABLY. THE INVENTOR USED BOTH  
23      WORDS INTERCHANGEABLY.

24              AND MR. YAMANAKA AS WELL WAS ASKED A SIMILAR QUESTION.  
25      THIS ONE WAS JUST ABOUT POINTER AND WOULD YOU AGREE WITH IT,

1 AND HE SAID YES.

2 AND IT'S ALSO -- AGAIN, WE CITE EXTRINSIC EVIDENCE, NOT  
3 BECAUSE WE'RE RELYING ON IT, MORE TO SHOW THAT WE'RE NOT CRAZY.  
4 THIS WAS A PERFECTLY WELL ACCEPTED, UNDERSTOOD DEFINITION FOR A  
5 LINK. ONE DEFINITION, CERTAINLY. THERE ARE OTHERS, BUT WE  
6 BELIEVE IT'S THE BEST DEFINITION.

7 WE'VE ALREADY TALKED ABOUT "REFERENCE" BEING TOO VAGUE.

8 AND I WOULD POINT OUT AGAIN HERE, YOUR HONOR, 112 HAS TO  
9 BE CONSIDERED. IF YOU'RE GOING TO SAY "REFERENCE," WHAT DOES  
10 THAT MEAN? WHAT'S A REFERENCE? WHAT'S NOT A REFERENCE? YOU  
11 KNOW, IS SIMPLY BEING IN THE SAME, YOU KNOW, ROOM A REFERENCE  
12 TO SOMETHING?

13 IT'S UNCLEAR, IT'S VAGUE, POTENTIALLY INDEFINITE.

14 YOU KNOW, TO THE EXTENT WE'RE GOING TO TAKE "LINK" TO THE  
15 OUTER LIMITS AND SAY ANYTHING IS A LINK, THEN WE'RE GOING TO  
16 HAVE WRITTEN DESCRIPTION ENABLEMENT ISSUES AS WELL.

17 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

18 MR. TRIBBLE.

19 MR. TRIBBLE: YES, YOUR HONOR.

20 OKAY. SO, AGAIN, IT'S ONE OF THESE THINGS ABOUT  
21 CONSTRUING THE CONSTRUCTION, OKAY?

22 WE PROPOSED "CONNECTION," BUT WE UNDERSTOOD  
23 "CONNECTION" -- AND WHEN WE SAID "POINTER," IT TALKS ABOUT  
24 POINTER THAT REFERS, AND SO WHENEVER WE SAY "POINTER," WE'VE  
25 ALWAYS UNDERSTOOD IT TO MEAN, AS JUDGE ARMSTRONG DID BECAUSE HE

1 SAID THAT A REFERENCE FALLS WITHIN THE MEANING OF "LINK," AND  
2 THEN HE USED THE WORDS "ELECTRONIC CONNECTION," AND SO I  
3 THINK -- IF YOU READ THE WHOLE OPINION, IT REFERS -- THIS IS  
4 BACK IN THE ORIGINAL PATENT, THE '720, IT TALKS ABOUT  
5 ELECTRONIC FILES AND, YOU KNOW, ELECTRONIC KIND OF MEANT, I  
6 GUESS, COMPUTERIZED OR SOMETHING.

7 AND SO I THINK BY "CONNECTION," HE MEANT AN ASSOCIATION.  
8 OKAY? AND THAT'S THE WAY WE MEANT IT WHEN WE PROPOSED IT.

9 AND ESPECIALLY GIVEN THE FACT THAT JUDGE ARMSTRONG, IN HIS  
10 OPINION, HAD SAID THAT REFERRING TO DATA -- YOU KNOW, A  
11 REFERENCE FALLS WITHIN THAT CONSTRUCTION THAT HE ADOPTED USING  
12 THE WORD "CONNECTION."

13 AND SO, AGAIN, YOU KNOW, "POINTER" COULD BE FINE IF IT  
14 MEANS "REFERENCE" OR "ASSOCIATION." YOU KNOW, IT'S INDIRECT.

15 SO AGAIN, LIKE I SAY, IT'S A STRANGE CASE. I'VE NEVER  
16 SEEN A CASE WHERE THE DEFENDANT IS PROPOSING TO CONSTRUE THE  
17 CLAIMS IN CONNECTION WITH THE ACCUSED PRODUCTS, AND I THINK  
18 IT'S IMPROPER.

19 BUT JUST TO EXPLAIN, WHEN YOU HAVE THE LOOK-UP TABLE IN  
20 MICROSOFT WORD AND IT'S GOT A COLUMN FOR MISSPELLED, THEY CALL  
21 IT A FLAG. WE CALL THAT A LINK OR A REFERENCE, A REFERRAL, GO  
22 LOOK AT THE SPELL CHECK DICTIONARY.

23 NEXT COLUMN, GO LOOK AT THE GRAMMAR DICTIONARY, YES OR NO.

24 AND AS WE SAW IN FIGURE 2 -- AND KEEP IN MIND, IN ADDITION  
25 TO JUDGE ARMSTRONG, WE HAVE THE 1994 IBM DICTIONARY OF

1        COMPUTING THAT TALKS ABOUT ASSOCIATION, OKAY?

2                AND -- WELL, JUST TO JUMP AHEAD, REMEMBER, I MEAN, WHAT  
3        MICROSOFT IS REALLY PROPOSING IS ADDRESS, WHETHER IT'S A MEMORY  
4        ADDRESS OR THE ROW NUMBER IN A TABLE, OKAY, OR THE FILE PATH.

5                YOU KNOW, THAT FILE PATH THEY SHOWED YOU, THAT'S NOT IN  
6        THE PATENT. THAT'S A DEMONSTRATIVE THEY CREATED.

7                AND AT THE END OF THE DAY, YOU KNOW, WE HAVE CLAIM 24  
8        WHERE THE LINK CAN BE REFERENCE INFORMATION FOR RETRIEVING, AND  
9        WE'RE REFERRING THEM, GO LOOK AT THE SPELL CHECK DICTIONARY.

10               BUT, AGAIN, I THINK THAT'S REALLY AN ISSUE FOR SUMMARY  
11        JUDGMENT LATER ON.

12               THE ISSUE IS, WHAT DOES "LINK" MEAN? WE HAVE  
13        JUDGE ARMSTRONG AND WE HAVE THE IBM DICTIONARY. CLEARLY "LINK"  
14        CAN BE DIRECT OR INDIRECT, VERY BROAD.

15               AND, YOU KNOW, WE WOULD GO WITH EITHER, YOU KNOW, THE IBM  
16        DICTIONARY OR JUST -- WE TRIED TO MEET THEM IN THE MIDDLE AND  
17        USE ALL THE SAME WORDS FROM JUDGE ARMSTRONG'S STATEMENT.

18               IN OTHER WORDS, THEY POOH-POOH IT NOW SAYING, "WELL, HE  
19        DIDN'T ADOPT THAT AS THE FINAL CONSTRUCTION."

20               BUT THAT'S WHERE THEY GOT THEIR PROPOSED CONSTRUCTION  
21        FROM, OR THOSE WORDS, THEY JUST REPLACED -- THEY TOOK ALL THOSE  
22        SAME WORDS, THEY SAY IN THE BRIEF, "THIS IS WHERE WE GOT IT  
23        FROM," SO IT WAS GOOD ENOUGH TO PUT IN THEIR CONSTRUCTION, ONLY  
24        THEN THEY WANT TO CHANGE AND STRIKE OUT "REFERRING" AND PUT IN  
25        "POINTER" THAT THEY'RE THEN GOING TO CONSTRUE LATER AS BEING

1 MORE NARROW THAN WHAT WAS INTENDED FROM THE VERY SOURCE FROM  
2 WHICH THEY GOT THEIR CONSTRUCTION.

3 AND THEN GOING BACK TO THIS, AGAIN, THEY POINT TO THIS  
4 AND, YOU KNOW, I THINK IT'S HELPFUL. THE TEXT, THAT'S A FLAG  
5 OR A POINTER OR A REFERENCE. GO LOOK AT THE TEXT DICTIONARY.

6 NOW, THE QUESTION IS, DO YOU HAVE TO HAVE THE COMMA 0 OR  
7 THE COMMA 100? WE SAY THAT'S THE PREFERRED EMBODIMENT.

8 THE COURT: IT'S ONE WAY TO DO IT.

9 MR. TRIBBLE: IT'S ONE WAY TO DO IT. AND WHATEVER IT  
10 SAYS, IT MAKES CLEAR IT'S A TWO-STEP PROCESS, THAT THERE'S  
11 PROCESSING THAT CAN GO ON AFTER THE REFERRAL TO THE TEXT  
12 DICTIONARY, AND THAT'S EXACTLY -- AGAIN, I THINK IT'S AN ISSUE  
13 FOR SUMMARY JUDGMENT.

14 BUT, YOU KNOW, AS FAR AS THE CLAIM CONSTRUCTION GOES, YOU  
15 KNOW, IT'S CLEAR THAT IT'S BROAD.

16 THE QUESTION IS, HAS THERE BEEN SOME KIND OF CLEAR  
17 DISAVOWAL OF CLAIM SCOPE?

18 AND THEN I WAS AMAZED TO HEAR FOR THE FIRST TIME EVER,  
19 BECAUSE IT'S NOT IN THE BRIEFING, THIS ASSERTION THAT THE  
20 PROSECUTION HISTORY RELATING TO THE CASSORLA REFERENCE, SOMEHOW  
21 WE'VE LIMITED OURSELVES TO THE -- THAT SOMEHOW WE'VE DISAVOWED  
22 THE FULL CLAIM SCOPE OF THE TERM "LINK," AND THEY INVITE THE  
23 COURT TO DO THAT SUA SPONTE EVEN THOUGH THEY HAVEN'T RAISED IT  
24 IN THEIR BRIEFING.

25 WELL, LET'S LOOK -- I WANT TO BE ABSOLUTELY CLEAR ABOUT

1 THIS. IT MAKES A STATEMENT, BUT THAT HAD NOTHING TO DO WITH  
2 DISTINGUISHING CASSORLA FOR A VERY SIMPLE REASON.

3 CAN YOU PULL UP EXHIBIT E TO MICROSOFT'S BRIEF? AND GO TO  
4 THE PAGE THAT HAS FIGURES 2 AND 3.

5 THEY SHOWED YOU THIS IN CONNECTION WITH "DATABASE." AND  
6 SO THE FIGURE 2 IS THE -- IS HOW THEY STORE THE, I GUESS YOU  
7 WOULD CALL IT THE SOURCE MATERIAL, OKAY?

8 AND SO YOU CAN SEE THAT FOR EACH PART -- AND IT CAN GO  
9 DOWN TO WORD LEVEL -- THOSE NUMBERS ON THE RIGHT -- SO IT SAYS  
10 IT'S THE FIRST HEADING, AND IT'S GOT A 0 IN SUBHEADING 2 AND  
11 SUBHEADING 3, AND SO ON. SO IT SAYS IT'S IN THE FIRST SECTION,  
12 THIRD PARAGRAPH, FIFTH WORD. I MEAN, IT'S A LITTLE MORE  
13 DETAILED THAN THAT, BUT THAT'S BASICALLY WHAT IT IS.

14 AND THAT'S WHY -- ONE OF THE REASONS IT'S DIFFERENT, IT  
15 USES THIS HIERARCHICAL STRUCTURE INSTEAD OF OFFSET AND THINGS  
16 LIKE THAT.

17 BUT MORE IMPORTANTLY, LOOK AT FIGURE 3. THIS IS THE  
18 STORAGE OF THE ANNOTATIONS.

19 SO LET'S BACK UP ONE PAGE JUST TO BE CLEAR ABOUT WHAT  
20 CASSORLA WAS. CASSORLA WAS, AS SHOWN IN FIGURE 1, WHERE YOU  
21 HAVE A TEXT -- JUST THE TOP PART, THE DISPLAY PART AT THE TOP,  
22 YEAH, THERE WE GO -- SO YOU HAVE TEXT AND THEN YOU CAN MAKE  
23 BRIEF ANNOTATIONS. SPELLING, QUESTION MARK? IT'S OKAY. THEY  
24 HAVE ONE THAT'S THREE WORDS LONG. OKAY. THOSE -- THAT'S WHAT  
25 CASSORLA WAS ABOUT. IT WAS ABOUT COMMENTING ON A DOCUMENT.



1 SO NOW LET'S GO TO THE NEXT PAGE, AND SO LET'S BLOW UP  
2 FIGURE 3.

3 THIS IS WHERE THEY STORED THE ANNOTATIONS, AND IT HAS THE  
4 COORDINATES FOR THE WORD OR PARAGRAPH THAT THE ANNOTATION  
5 RESPONDS TO, AND IT'S GOT SOME ITEM TYPE, THINGS LIKE THAT.

6 AND THEN IT HAS THE ACTUAL REFERENCE MATERIAL. IT HAS THE  
7 ANNOTATION IN IT. THERE'S NO LINK. THERE'S NO LINK IN  
8 CASSORLA. SO WHATEVER WE SAID ABOUT LINK HAD NOTHING TO DO  
9 WITH SOME DISAVOWAL OF THE SCOPE OF LINK BECAUSE IT WASN'T  
10 RELEVANT TO CASSORLA. IT DIDN'T HAVE ANY LINKS.

11 THANK YOU, YOUR HONOR.

12 THE COURT: THANK YOU, MR. TRIBBLE.

13 ALL RIGHT. IF I MIGHT, I'D LIKE TO TAKE A SHORT BREAK AND  
14 THEN WE'LL KEEP GOING AT IT.

15 THANK YOU.

16 MR. TRIBBLE: THANK YOU, YOUR HONOR.

17 (RECESS FROM 11:24 A.M. UNTIL 11:41 A.M.)

18 THE COURT: ALL RIGHT. LET'S TURN TO THE THIRD TERM.  
19 I BELIEVE IT'S "SYNDICATED." AM I RIGHT ABOUT THAT?

20 MR. SETH: OKAY. AS WE SWITCH NOW TO THE SECOND  
21 PATENT FAMILY, I WANTED TO FIRST GET A LITTLE BIT OF CLARITY  
22 WITH REGARD TO SOME DIFFERENCES BETWEEN THESE TWO PATENT  
23 FAMILIES.

24 AS WE'VE EXTENSIVELY DISCUSSED THIS MORNING, THE FIRST  
25 PATENT FAMILY RELATES TO THE USE OF THIS LOOK-UP TABLE TO

1       RECORD THE STARTING AND END POINT ADDRESSES OF THE WORDS THAT  
2       WE'VE CUT FROM A SOURCE TEXT DOCUMENT TO CREATE THIS WORDIFIED  
3       DATABASE AND THEN PUT IN SOME FORM OF LINKING INFORMATION TO  
4       EXTERNAL SOURCE MATERIALS, AND CLAIM 8 OF THE '731 PATENT  
5       RECITES THAT QUITE EXTENSIVELY.

6               NOW, THE SECOND PATENT FAMILY IS A COMPLETELY DIFFERENT  
7       PATENT FAMILY -- AND I'LL EXPLAIN THIS SLIDE IN A MINUTE -- IN  
8       THAT THERE'S NO REQUIREMENT IN THE CLAIMS OF THE SECOND PATENT  
9       FAMILY TO ACTUALLY USE THE LOOK-UP TABLE, ALTHOUGH THERE'S A  
10      DISCUSSION AND EVEN A REFERENCE BACK TO THE '720 ORIGINAL  
11      PATENT FOR THE USE OF THE LOOK-UP TABLE IN THE LINKING  
12      PROCEDURES.

13              NOW, THE LINKING PROCEDURES ARE, YOU KNOW, DESCRIBED VERY  
14      SIMILARLY, BUT WHAT THE MAIN THRUST OF THE SECOND PATENT FAMILY  
15      HAS TO DO WITH IS THE CENTRALIZED ARCHITECTURE AND HOW WE'RE  
16      GOING TO UTILIZE LOCAL COPIES OF THE DATABASES THAT WE NEED TO  
17      PERFORM THE LINKING, AND IN PARTICULAR, HOW WE'RE GOING TO GET  
18      THE DICTIONARIES OUT TO THE REMOTE PROCESSORS THAT ARE USING  
19      THEM.

20              THE COURT:   UM-HUM.

21              MR. SETH:   SO THE REASON I BROUGHT THIS SLIDE UP IS I  
22      JUST WANTED TO CLARIFY SOMETHING, AND THAT IS THAT IN THIS  
23      TIMELINE, WHICH CAME UP IN THE TUTORIAL AND IT WAS -- THERE WAS  
24      SOME ALLUSION TO IT IN THE BRIEFING AS WELL, THERE'S SOME  
25      CONFUSION INTRODUCED AND I WANTED TO STRAIGHTEN THAT OUT AND

1 THEN WE'LL GO RIGHT INTO "SYNDICATE."

2 THE COURT: SURE.

3 MR. SETH: AND THAT IS THAT THE MICROSOFT OFFICE 95  
4 PRODUCT AND 97 AND 2000 ARE ALL PRODUCTS THAT ARE ACCUSED OF  
5 INFRINGING THE FIRST PATENT FAMILY FOR USING THE LOOK-UP TABLES  
6 IN WHICH THEY'RE ABLE TO DO THE RED SQUIGGLIES AND THE GREEN  
7 SQUIGGLIES AND PROVIDE THIS DYNAMIC INFORMATION ON THE FLY WHEN  
8 YOU RIGHT CLICK ON THEM AND YOU CAN GET TO THE APPROPRIATE  
9 SPELLINGS OR THE APPROPRIATE GRAMMAR, EXECUTING THE LINK THAT'S  
10 IN THE LOOK-UP TABLE.

11 IN THE -- SO THESE, THESE ARE ALSO ACCUSED -- I'M SORRY.  
12 NONE OF THESE ARE ACCUSED AGAINST THE SECOND PATENT FAMILY, AND  
13 THIS IS WHERE I WANTED TO CLARIFY. THE SECOND PATENT FAMILY,  
14 WHICH WE SAY REQUIRES THE AUTOMATIC -- THE AUTOMATIC DELIVERY  
15 OF THE DICTIONARIES, THAT IS NOT A FEATURE THAT WAS INTRODUCED  
16 UNTIL WINDOWS -- I'M SORRY -- OFFICE 2010. SO I JUST WANTED TO  
17 CLARIFY THIS.

18 THE COURT: I APPRECIATE THAT. THAT'S HELPFUL.

19 IS THIS -- IS THIS TIMELINE IN THE MATERIALS? DO I HAVE A  
20 COPY OF THIS?

21 MR. SETH: YOU DO HAVE A COPY OF THE TIMELINE.

22 OH, NO. WE'RE GOING TO GIVE YOU A COPY OF THE TIMELINE.

23 THE COURT: I APPRECIATE THAT.

24 MR. LAMBERSON: IT'S FROM OUR TECHNICAL TUTORIAL,  
25 YOUR HONOR.

1 MR. SETH: BUT WE'LL ACTUALLY GIVE YOU A PRINTOUT OF  
2 THIS SLIDE.

3 THE COURT: I APPRECIATE THAT. THANK YOU. I KNEW  
4 I'D SEEN IT SOMEWHERE.

5 MR. TRIBBLE: YOUR HONOR, HERE'S ONE COPY, AND WE'LL  
6 HAVE SOME MORE COPIES FOR THE COURT IN JUST A SECOND.

7 THE COURT: I APPRECIATE THAT. THANK YOU.

8 MR. SETH: OKAY. AND NOW I WILL GET INTO THE  
9 PRESENTATION PROPER.

10 HERE WE HAVE THE THORNY ISSUE OF WHAT IS "SYNDICATING,"  
11 AND UNLIKE THE "DATABASE" LIMITATIONS OR THE "LINKING"  
12 LIMITATIONS OF THE FIRST PATENT FAMILY IN WHICH WE'RE TALKING  
13 ABOUT TERMS THAT ARE, YOU KNOW, PRETTY CLEARLY DEFINED, PRETTY  
14 WELL UNDERSTOOD, PRETTY PLAIN AND ORDINARY TERMS IN THE ART, WE  
15 NOW HAVE THIS "SYNDICATED" TERM THAT COMES FROM SOME BASIS BACK  
16 IN THE 1800S AND IT IMPLIES THAT THERE'S SOME KIND OF  
17 PUBLICATION AND THERE MAY BE A ONE TO MANY RELATIONSHIP, OR  
18 PERHAPS A SIMULTANEOUS RELATIONSHIP, WE'RE NOT REALLY SURE.  
19 AND WE NEED TO FIGURE OUT WHAT THIS TERM MEANS IN THE CONTEXT  
20 OF THIS PATENT.

21 WE SAY IT'S "MAKING CONTENT AVAILABLE FOR AUTOMATIC  
22 DOWNLOAD OVER" -- AND BY THE WAY, WE UPDATED AS WELL TO SAY,  
23 YEAH, YOU'RE RIGHT, IT DOESN'T NEED TO BE OVER THE INTERNET,  
24 BUT "OVER A NETWORK TO ONE OR MORE REMOTE SUBSCRIBED  
25 COMPUTERS."

1           AND ONE THING I WANTED TO JUST TALK ABOUT IS, YOU KNOW,  
2           WE'RE CONSTANTLY ADMONISHED NOT TO IMPORT LIMITATIONS INTO A  
3           CLAIM TERM FROM THE PREFERRED EMBODIMENT, BUT WHAT DOES THE  
4           COURT DO WHEN THE TERM IS SOMEWHAT VAGUE OR SUBJECT TO MULTIPLE  
5           ARBITRATIONS?

6           AND THIS CAME -- THIS ISSUE CAME UP PRETTY SQUARELY IN  
7           THIS NETWORK COMMERCE, INC. VERSUS MICROSOFT CASE IN WHICH THE  
8           TERM "DOWNLOAD COMPONENT" HAD TO BE CONSTRUED, AND THIS WAS  
9           CLEARLY NOT A TERM THAT YOU COULD FIND IN A DICTIONARY, LIKE  
10          "SYNDICATING" IS. YOU CAN'T GO TO A COMPUTER DICTIONARY AND  
11          FIND IT. AND THE COURT HAD TO RESORT TO THE SPECIFICATION TO  
12          TRY TO FIGURE OUT WHAT THE TERM MEANS.

13          IN THAT PARTICULAR CASE, THERE WERE BASICALLY THREE  
14          ELEMENTS OF "DOWNLOAD COMPONENT" THAT THE SPECIFICATION  
15          RECITED, AND THAT WAS ALSO SORT OF THE ONLY EXAMPLE OF A  
16          DOWNLOAD COMPONENT THAT WAS GIVEN, AND THE COURT CONSTRUED THE  
17          TERM TO HAVE ALL THREE OF THOSE FUNCTIONS DESCRIBED IN THE  
18          SPECIFICATION.

19          NOW, WHAT I'D LIKE TO DO IS --

20                 THE COURT:   KIND OF LIKE, MR. SETH, THIS PARTICULAR  
21                 DISCLOSURE SEEMS TO TALK ABOUT POINTERS AND POINTERS ALONE, AND  
22                 WE'RE TALKING ABOUT LINKS, RIGHT? I TAKE YOUR POINT HERE TO BE  
23                 THE FLIP SIDE OF THE ARGUMENT I WAS JUST HEARING BETWEEN  
24                 MR. TRIBBLE AND MR. LAMBERSON.

25                 MR. SETH:   RIGHT. WELL, WHEREAS THE '731 PATENT WAS

1 EXTREMELY OPEN-ENDED WITH REGARD TO A "LINKED" TERM, OR A  
2 "DATABASE" TERM, WE HAVE A VERY DIFFERENT SITUATION WITH THE  
3 '985 PATENT FAMILY BECAUSE WE HAVE AN ENTIRE ARCHITECTURE  
4 THAT'S DESIGNED FOR ONE PURPOSE WHEN IT COMES TO THE  
5 SYNDICATION OF THE DATABASES, AND THAT IS TO AUTOMATICALLY GET  
6 THOSE DATABASES TO ALL THE REMOTELY -- TO THE REMOTE PROCESSORS  
7 THAT ARE SUBSCRIBED FOR THOSE DATABASES, AND WE'RE GOING TO  
8 WALK THROUGH THE SPEC AND SHOW EXACTLY HOW CLEAR THAT POINT IS  
9 IN THE SPEC.

10 AND WE START WITH A CALL OUT FROM THE '985 PATENT WHERE  
11 WHAT -- WHAT ARE WE TRYING TO ACHIEVE WITH THIS INVENTION?

12 AND WE'RE TRYING TO ACHIEVE THE SCALEABLE SYSTEM, SO THERE  
13 IS A ONE TO MANY RELATIONSHIP GOING ON HERE THAT'S VERY  
14 CONSISTENT WITH THE USE OF THE WORD "SYNDICATION."

15 OKAY. WE WANT TO BE ABLE TO GET THIS OUT TO AS MANY  
16 COMPUTERS AS WE CAN SELL OUR PRODUCT TO.

17 AND, OF COURSE, THE TITLE ALSO IMPLIES THE IMPORTANCE OF  
18 THE AUTOMATED DELIVERY.

19 BUT HERE FIGURE 1 IS A DIAGRAM ILLUSTRATING THE  
20 RELATIONSHIP BETWEEN THE MODULES THAT COMPRISE THE AUTOMATED  
21 DATABASE CREATION AND DELIVERY SYSTEM, AND OUR CLAIMS ARE NOT  
22 TO THE DATABASE CREATION, OUR CLAIMS ARE TO THE SYNDICATION.

23 BUT IT IS -- SO WE HAVE THE TITLE, AND QUITE IMPORTANTLY,  
24 THE SPECIFICATION IS VERY CLEAR THAT THE -- WHAT'S CALLED THE  
25 RICHLINK PROCESSORS IN THE PREFERRED EMBODIMENT, BUT WHICH, YOU

1 KNOW, THE LINKING ENGINE BASICALLY, IN THE PARSING AND THE  
2 LINKING AND ALL THE FUNCTIONALITY AT THE REMOTE COMPUTER, THAT  
3 SOFTWARE IN ITS VARIOUS MODULES WILL AUTOMATICALLY DOWNLOAD,  
4 FROM THE CENTRAL DATABASE, THE DATA STRUCTURES NECESSARY TO  
5 PERFORM THE HIGH-SPEED TAGGING OF THE TEXT AND EXECUTE THE  
6 TAGGING RULES SO THAT WE CAN PERFORM THE LINKING.

7 OKAY. THAT'S ABSOLUTELY CRITICAL.

8 AND WHAT WE'RE TALKING ABOUT HERE, JUST TO BE VERY CLEAR,  
9 ARE -- THE DATA OBJECTS THAT WE'RE SYNDICATING ARE BASICALLY  
10 WHAT WILL BE THE LOCAL COPIES OF THE DICTIONARY THAT WILL BE  
11 USED.

12 SO THERE'S A MASTER COPY OF THE DICTIONARY AT THE CENTRAL  
13 PROCESSOR AND THAT WILL PERIODICALLY BE UPDATED, AND THEN WE  
14 HAVE LOCAL REPRESENTATIONS THAT ARE BEING USED AT THE REMOTE  
15 PROCESSORS, AND SO THOSE DATA OBJECTS, YOU KNOW, REFERRED TO IN  
16 THE CLAIMS ARE THE CONTENTS OF THE DATABASE AND THE TEMPLATES  
17 THAT ARE ONCE AGAIN SYNDICATED TO THE REMOTE SERVERS RUNNING A  
18 PROCESSING ENGINE.

19 SO IN THIS PATENT, WE HAVE THE AUTOMATED DELIVERY AND THAT  
20 IS REFERRED TO IN THE PATENT AS SYNDICATION.

21 THE COURT: AND OF COURSE THE AMBIGUITY, RIGHT,  
22 MR. SETH, IS THAT THE TITLE OF THE PATENT SAYS "AUTOMATED  
23 CREATION AND DELIVERY." THE QUESTION IN MY MIND IS, DOES THE  
24 "AUTOMATED" MODIFY BOTH "CREATION" AND "DELIVERY" OR JUST  
25 "CREATION"?

1 MR. SETH: RIGHT. BUT THERE ARE MANY OTHER VERY  
2 CLEAR REFERENCES --

3 THE COURT: FAIR ENOUGH.

4 MR. SETH: -- THAT THEY'RE AUTOMATED DELIVERY.

5 THE COURT: THAT MAY BE THE CASE.

6 MR. SETH: THAT THE DELIVERY IS AUTOMATED IN ALL  
7 CASES.

8 AND ALONG THOSE LINES, YOUR HONOR, THERE ARE -- I THINK  
9 THE FACT THAT THERE ARE SO MANY REFERENCES NOT TO AUTOMATED  
10 SYNDICATION DOES TEND TO SHOW THAT THE IDEA WAS THAT  
11 SYNDICATION REFERS TO THE AUTOMATED DELIVERY. THAT'S WHAT THE  
12 WHOLE DELIVERY ARCHITECTURE IS GEARED FOR.

13 AND, AGAIN, THIS IS CALLED OUT FROM THE '985 PATENT WHERE  
14 IT ACTUALLY MAKES THE POINT WE WERE JUST DISCUSSING WHERE  
15 THERE'S AUTOMATIC BUILDING, THERE'S AUTOMATIC ASSIGNMENT, AND  
16 THEN THERE'S SYNDICATION.

17 SO WHY DID THEY NOT NEED TO FEEL -- WHY DO THEY FEEL NO  
18 NEED TO PUT "AUTOMATIC"? WELL, THAT IS BECAUSE IT'S AUTOMATED  
19 DELIVERY.

20 NOW, GOING INTO A LITTLE BIT OF DETAIL REGARDING HOW THIS  
21 SYSTEM WORKS, YOU HAVE THE SYSTEM, THE CENTRAL SERVER, WHICH IN  
22 9B IS -- THERE'S NO NUMBER, BUT IT'S REFERRED TO AS THE SYSTEM  
23 DB SERVER.

24 AND THEN YOU HAVE -- IN THIS EXAMPLE, THERE'S TWO RICHLINK  
25 PROCESSORS THAT ARE CONNECTED TO THE CENTRAL SERVER OVER THE



1 NETWORK. THEY'RE RUNNING.

2 AND THEY HAVE MODULES, AND LATER ON WE'LL BE TALKING ABOUT  
3 MODULES, BUT THERE ARE A WHOLE HOST OF MODULES THAT THE  
4 SPECIFICATION GOES INTO THAT COMPRISE THIS SYSTEM THAT'S  
5 RUNNING ON THE REMOTE SERVER OR ON THE REMOTE PROCESSOR.

6 AND ONE OF THEM, OR TWO OF THE MODULES ARE CALLED THE  
7 LEXICON AND TEMPLATE MANAGERS, AND THESE ARE IMPORTANT BECAUSE  
8 HERE THE SPECIFICATION IS DESCRIBING VERY CLEARLY THAT, THAT  
9 THESE ARE USED -- ARE WHAT IS AUTOMATICALLY OBTAINING THE  
10 COPIES THAT THEY ARE SUBSCRIBED TO OF THE DATABASES THAT THEY  
11 WILL BE USING FOR THE LINKING PROCESS, OR THE DICTIONARIES I  
12 SHOULD SAY.

13 SO IN THIS EXAMPLE, THEY ACTUALLY LOG INTO THE CENTRAL  
14 PROCESS THAT -- AND IT SAYS, "PREFERENCES ARE ENFORCED BASED ON  
15 THAT LOGIN SO THAT THE SERVER ONLY OBTAINS LEXICONS AND  
16 TEMPLATES FOR WHICH THEY HAVE PRIVILEGES."

17 THE COURT: SO IN THIS PORTION OF THE SPECIFICATION,  
18 WHEN THE SPECIFICATION OR THE DESCRIPTION IS REFERRING TO  
19 OBJECTS, IT'S YOUR READING OF THIS THAT THE OBJECTS WE'RE  
20 TALKING ABOUT HERE ARE ALL LOCAL OBJECTS, AND THE POINT IS THAT  
21 THE LOCAL OBJECTS ARE THEN AUTOMATICALLY ACCESSING CONTENT TO  
22 WHICH THERE'S -- TO WHICH IT SUBSCRIBES ON SOME TYPE OF REMOTE  
23 SERVER? IS THAT BASICALLY THE IDEA?

24 MR. SETH: THERE ARE MODULES, AND THE OBJECTS THAT  
25 ARE REFERRED TO IN THE CLAIM ARE, ARE THE BASICALLY THE COPIES

1 FOR SYNDICATION OF THE DATABASE.

2 THE COURT: OKAY.

3 MR. SETH: THOSE ARE REFERRED TO AS THE LEXICON  
4 OBJECTS IN THE SPECIFICATION, BUT IT'S JUST A COPY OF THE  
5 CENTRAL TERM DATABASE.

6 THE COURT: AND ARE THOSE COPIES LOCAL COPIES OR ARE  
7 THEY REMOTE COPIES? THAT'S JUST THE CONFUSION I HAVE IN MY  
8 MIND.

9 MAYBE I'M NOT BEING CLEAR. LET ME TRY IT AGAIN AND YOU  
10 CAN TELL ME IF I'VE GOT THIS RIGHT OR WRONG.

11 MR. SETH: OH, SURE.

12 THE COURT: AS I READ THIS, AND AS I READ IT BEFORE,  
13 MY IMPRESSION IS THAT IT TALKS ABOUT TEMPLATE DATABASES,  
14 TEMPLATE OBJECTS, AND WHEN IT SAYS TEMPLATE OBJECTS IN  
15 PARTICULAR, IT TALKS ABOUT IT FOR THAT SERVER, AND I HAD  
16 UNDERSTOOD THAT TO MEAN THE REMOTE SOURCE OF THE CONTENT, BUT  
17 PERHAPS I'M MISINTERPRETING HOW THIS ALL FITS TOGETHER.

18 MR. SETH: LET ME SEE IF I CAN --

19 THE COURT: UNDOUBTEDLY I AM, SO WHY DON'T YOU TAKE A  
20 RUN AT TRYING TO CORRECT MY MISUNDERSTANDING.

21 MR. SETH: LET ME SEE IF I CAN CLARIFY THAT.

22 THE COURT: YEAH.

23 MR. SETH: THERE'S SOMETHING THAT'S GOING TO BE  
24 SYNDICATED FROM THE MASTER, FROM THE CENTRAL SERVER.

25 THE COURT: RIGHT. THAT'S SERVER NUMBER 1 IN THIS

1 CASE.

2 MR. SETH: RIGHT. OH, NO, NO, NO. THAT'S WHAT'S  
3 BEING SYNDICATED TO. THAT'S THE CONFUSION.

4 THE COURT: THAT'S MY CONFUSION.

5 MR. SETH: IT IS ALSO REFERRED TO AS A SERVER, BUT  
6 THE CENTRAL SERVER IS WHAT YOU SEE IN THE MIDDLE. THAT'S  
7 WHAT'S HOSTING THE MASTER COPY OF THE DATABASE, AND IT'S -- IN  
8 THIS PREFERRED EMBODIMENT, IT'S A PULL SYSTEM, WHAT WE REFER TO  
9 AS A PULL SYSTEM IN THAT THESE REMOTE -- WHAT YOU SEE, THE  
10 RICHLINK PROCESSOR, ARE THE REMOTE COMPUTERS.

11 THE COURT: EITHER ONE OR TWO IS PULLING FROM THE  
12 SYSTEM DB SERVER IN THE MIDDLE.

13 MR. SETH: THE DICTIONARY COPIES THAT THEY'RE  
14 AUTHORIZED TO RECEIVE.

15 THE COURT: BY SUBSCRIPTION.

16 MR. SETH: BY SUBSCRIPTION.

17 THE COURT: OKAY, GOT IT.

18 MR. SETH: AND THOSE ARE REFERRED TO AS THE LEXICON  
19 OBJECTS.

20 THE COURT: THAT'S HELPFUL. THANK YOU.

21 MR. SETH: OKAY.

22 AND THIS IS JUST, AGAIN, THESE ARE SUBSCRIBED -- THIS IS  
23 THE SPECIFICATION TALKING ABOUT THAT THESE ARE SUBSCRIBED  
24 COMPUTERS. YOU'RE NOT GOING TO JUST GIVE OUT THE COPIES OF THE  
25 DICTIONARY TO ANYBODY WHO ASKS.

1           AND THIS IS ALSO SOMEWHAT IMPORTANT, AND THERE'S DEPENDENT  
2           CLAIMS THAT GO TO SYNCHRONIZATION AS WELL, AND WE CONTEND, YOUR  
3           HONOR, THAT THE AUTOMATED DELIVERY NATURE OF THE SYNDICATION  
4           PROCESS IS WHAT ENABLES THIS ROUTINE SYNCHRONIZATION TO ALSO BE  
5           TAKING PLACE TO WHERE WHEN THE SYSTEM STAYS IN SYNC, WHEN  
6           THERE'S AN UPDATE TO THE MASTER DATABASE, IT'S VERY IMPORTANT  
7           THAT IF YOU WANT ALL YOUR PROCESSORS TO BE PROVIDING THE SAME  
8           POP UP WINDOW AND THE SAME INFORMATION, THEY SHOULD HAVE THE  
9           MOST RELEVANT CONTENT, THE MOST UP-TO-DATE CONTENT, AND SO THEY  
10          PERFORM A SYNCHRONIZATION, WHICH CAN BE JUST A PERIODIC  
11          SYNCHRONIZATION OR IT CAN BE BY NOTICE FROM THE CENTRAL  
12          PROCESSOR, "HEY, I'VE UPDATED MY DATABASE. YOU NOW GET THE  
13          LATEST COPY."

14          AND ALL THIS IS BY THE WAY -- YOU KNOW, BY WAY OF HAVING  
15          THIS WHOLE ENTIRE ARCHITECTURE THAT ALLOWS YOU TO HAVE  
16          THOUSANDS, MILLIONS, OR HOWEVER SCALEABLE YOU WANT IT TO BE,  
17          RUNNING THE SAME CONTENT IN ORDER TO PROVIDE THE SAME LINKING  
18          INFORMATION WHEN YOU ACTUALLY ACCESS AND RETRIEVE THE  
19          INFORMATION BASED ON THE LINK.

20          AND OF COURSE, YOU KNOW, THEY CONTINUOUSLY REENFORCE THAT  
21          THESE ARE COMPUTER IMPLEMENTED METHODS.

22          AND SO OUR POINT IS THAT WHEN IT COMES TO THE PROPOSED  
23          CONSTRUCTION OF MICROSOFT THAT THIS JUST BE DISTRIBUTING,  
24          THAT'S WAY TOO BROAD. THAT WOULD ENCOMPASS JUST HANDING  
25          SOMEBODY A CD AND THAT, THAT -- IT HAS NOTHING TO DO WITH

1       ENABLING THE AUTOMATIC DOWNLOAD OR BEING IN THE NETWORK  
2       ENVIRONMENT OR ANY OF THE ARCHITECTURE THAT'S CLEARLY,  
3       UNIFORMLY, AND SOLELY DISCLOSED WHEN IT COMES TO THIS DELIVERY  
4       PROCESS.

5               THE COURT:   MR. SETH, CAN WE JUST BRING UP ONE OF THE  
6       ASSERTED CLAIMS IN THE '985 THAT USES SYNDICATING?

7               MR. SETH:   YES.

8               THE COURT:   MAYBE CLAIM 1 OR CLAIM 11.   IT DOESN'T  
9       REALLY MATTER.

10              MR. SETH:   LET ME JUST GET US TO A SLIDE THAT DOES  
11       THAT.   I'LL GET THAT IN JUST A SECOND.

12              THE COURT:   THERE WE GO.   THANK YOU.

13              MR. SETH:   OKAY.

14              THE COURT:   SO I JUST WANT TO RUN YOUR LAST ARGUMENT  
15       THROUGH THIS ACTUAL CLAIM --

16              MR. SETH:   SURE.

17              THE COURT:   -- AND SEE HOW IT PLAYS.

18              WHAT YOU'RE SAYING THEN, AMONG OTHER THINGS, IS THAT WE  
19       HAVE SYNDICATING AS ESSENTIALLY THE FIRST STEP OF THIS, RIGHT?  
20       I BELIEVE THAT'S THE ONLY PLACE IN THE CLAIM THAT THE TERM  
21       "SYNDICATING" APPEARS.

22              IN THAT -- IN THIS CASE, THE PREAMBLE, YOU HIGHLIGHTED  
23       JUST A MINUTE AGO THE FACT THAT THE PREAMBLE IN ALL OF THESE  
24       CLAIMS, OR AT LEAST MANY OF THEM, TALK ABOUT A COMPUTER  
25       IMPLEMENTED METHOD.

1           IS YOUR SIMPLE POINT HERE THAT FOR THE "SYNDICATED" TERM,  
2           AND FRANKLY FOR EACH OF THE OTHER CLAIMS THAT FOLLOW, IT WOULD  
3           MAKE NO SENSE FOR THOSE TO BE ANYTHING OTHER THAN COMPUTER  
4           IMPLEMENTED WHEN THE PREAMBLE MAKES PRETTY CLEAR THAT'S THE  
5           WHOLE POINT OF THIS STRUCTURE? IS THAT BASICALLY IT?

6           MR. SETH: YES, THAT'S CORRECT. THAT IS CORRECT.

7           THE COURT: OKAY.

8           MR. SETH: IT'S ONE CLUE OR INDICATOR AS TO WHAT  
9           THE --

10          THE COURT: IT MAY NOT BE DISPOSITIVE, BUT IT'S A  
11          HINT THAT WE'RE LOOKING AT THIS THING.

12          MR. SETH: WE'RE TALKING ABOUT AUTOMATED THINGS  
13          HAPPENING.

14          AND I JUST WANTED TO POINT OUT, IT'S NOT HIGHLIGHTED IN  
15          THE SLIDE, BUT THE DATA OBJECTS WE'RE TALKING, YOU KNOW, ABOUT  
16          THE LEXICON OBJECTS IN THE SPECIFICATION.

17          THE COURT: YEAH.

18          MR. SETH: OKAY.

19          THE COURT: OKAY. THANK YOU. THAT'S HELPFUL.

20          MR. SETH: OKAY.

21          THE COURT: MR. LAMBERSON.

22          MR. LAMBERSON: SO SINCE SENTIUS SET THE TABLE A  
23          LITTLE BIT WITH THE TIMELINE, I THOUGHT MAYBE I'D DO THAT A  
24          LITTLE BIT AS WELL.

25          THE COURT: SURE.

1 MR. LAMBERSON: JUST SO THAT YOUR HONOR UNDERSTANDS,  
2 THE PROBLEM HERE IS SENTIUS HAS MADE A PROBLEM FOR ITSELF BY  
3 AMENDING ITS CLAIMS TO BE THE WAY THAT THEY ARE TODAY.

4 IF YOU TAKE A LOOK AT THE PROSECUTION HISTORY, THIS WAS  
5 EXHIBIT M, AND IF YOU LOOK AT THE CLAIMS THAT WERE ORIGINALLY  
6 FILED, WHAT YOU'RE GOING TO SEE IS THAT THOSE CLAIMS REALLY  
7 READ ON WHAT I'LL CALL SORT OF THE FRONT END WORK, PICKING OUT  
8 THE TERMS, ASSIGNING THEM TO EXPERTS.

9 THAT'S REALLY WHAT THESE PATENTS ARE ABOUT. IF YOU READ  
10 THESE TWO PATENTS, THESE LATER PATENTS, THE ONLY WRITTEN  
11 DESCRIPTION IS ABOUT HOW YOU ASSIGN THESE TERMS TO EXPERTS AND  
12 THEN YOU CREATE THE DATABASE AND THEN YOU SEND IT OUT.

13 THERE'S REALLY ALMOST NO DISCUSSION OF THE BACK END, THE  
14 RICHLINK PROCESSOR. THE ONLY DISCUSSION THAT THERE IS SAYS "GO  
15 SEE OUR '720 PATENT," AND THAT'S IT.

16 SO WHEN YOU LOOK AT THE CLAIMS THAT WERE ORIGINALLY,  
17 ORIGINALLY FILED BACK WHEN THE APPLICATION WAS FILED, THAT'S  
18 WHAT THEY COVERED. THERE WAS NO SYNDICATING. SYNDICATING  
19 WASN'T THERE. IT WAS REALLY EVERYTHING UP UNTIL THAT POINT  
20 THAT THEY WERE TRYING TO CLAIM.

21 IDENTIFYING THE TERM, IT'S HARD TO READ BECAUSE IT'S  
22 BLACKED OUT; ASSIGNING A TERM TO A SOURCE FOR IDENTIFYING  
23 SUPPLEMENTAL CONTENT, THAT'S THE EXPERT; BUILDING A DATABASE;  
24 AND THEN THE LAST, I BELIEVE, WOULD HAVE BEEN -- SO SYNDICATING  
25 WAS THE LAST STEP.

1           WHAT THEY DID -- SENTIUS DECIDED, YOU KNOW WHAT -- WELL, I  
2           DON'T KNOW WHAT THEY DECIDED. I DON'T CLAIM TO KNOW WHAT THEY  
3           DECIDED.

4           BUT FOR WHATEVER REASON, THEY DECIDED THEY WANTED TO CLAIM  
5           THE BACK END, SO THEY TOOK ALL THAT PART ABOUT THE FRONT END  
6           OUT AND NOW IT'S JUST A BACK END PROCESS, AND THE PROBLEM THEY  
7           HAVE, YOUR HONOR, FRANKLY IS THAT THAT'S WHAT THE '720 PATENT  
8           AND THE RE-ISSUED PATENTS ARE ABOUT.

9           AND THE OTHER PROBLEM THEY HAVE IS THAT YOU HAVE  
10          SEVEN-PLUS YEARS OF TIME -- AND THESE PATENTS ARE NOT  
11          RELATED -- SO THE PRIORITY DATE HERE IS 2001.

12          THE REASON WE HAD THAT TIMELINE, IF YOU LOOK AT IT, THE  
13          ACCUSED PRODUCT IS RED SQUIGGLES. WELL, RED SQUIGGLES HAVE  
14          BEEN AROUND SINCE '95; GREEN SQUIGGLES ARE ACCUSED, THOSE HAVE  
15          BEEN AROUND SINCE '97; SYNONYMS ARE ACCUSED, THOSE HAVE BEEN  
16          AROUND SINCE 2000; AND ACTIONS OR SMART TEXT, OFFICE XP, WHICH  
17          WAS RELEASED A FEW MONTHS BEFORE THEY FILED THESE PATENTS,  
18          EVERY SINGLE ONE OF THESE ACCUSED FEATURES WAS IN OFFICE BEFORE  
19          THESE PATENTS WERE EVER FILED.

20          NOW, HOW DOES SENTIUS TRY TO GET AROUND THAT? THEY TRY TO  
21          DO IT THROUGH SYNDICATING. WE DON'T THINK THAT EVEN SUCCEEDS,  
22          BUT THAT IS WHAT'S GOING ON HERE. THEY HAVE A PROBLEM. THEY  
23          HAVE SOME PATENTS WHERE THEY CHANGED THE CLAIMS TO TRY TO READ  
24          THEM TO BE ON THE BACK END INSTEAD OF THIS EXPERT PROCESS. WHO  
25          KNOWS HOW THE EXPERT PROCESS WOULD HAVE FARED. BUT IT IS A



1 PROBLEM FOR THEM.

2 SO NOW WE'RE ARGUING ABOUT SYNDICATING, SO LET ME JUST GO  
3 BACK.

4 OKAY. SO THE QUESTION IS, WHAT DOES "SYNDICATING" MEAN?  
5 AND THE DISPUTES ARE, I THINK, IS IT AUTOMATIC? IS IT OVER A  
6 NETWORK? EVERYBODY AGREES THOSE ARE THE TWO ISSUES.

7 AND WE HAVE TO START WITH THE FACT THAT EVERYBODY AGREES,  
8 "SYNDICATING" IS NOT A COINED TERM. THIS IS NOT A TERM THAT  
9 SENTIUS MADE UP. IT'S A TERM THAT EVERYBODY WAS ABLE TO FIND  
10 IN DICTIONARIES.

11 NOW, SENTIUS IS RIGHT. IT PROBABLY IS A TERM FROM THE  
12 1800S ORIGINALLY. IT'S AN OLD TERM. IT'S A TERM THAT'S BEEN  
13 AROUND.

14 BUT THEY CHOSE TO USE THIS WORD IN THEIR CLAIMS. AND THE  
15 IMPORTANT PIECE THERE IS NONE OF THE DICTIONARY DEFINITIONS  
16 CITED BY ANYBODY FOR THIS PLAIN MEANING TERM TALK ABOUT  
17 AUTOMATIC OR TALK ABOUT A NETWORK.

18 AND IF IT'S FROM THE 1800S, WE KNOW THAT NETWORK IS OUT.  
19 AUTOMATIC -- SOMEBODY HAD TO PUT IT IN THE MAIL. IT'S PROBABLY  
20 NOT AUTOMATIC.

21 AND WHAT THE THORNER CASE TELLS US HERE, WHEN YOU'RE  
22 DEALING WITH A PLAIN MEANING TERM -- THERE THE CASE DEALT WITH  
23 "FLEXIBLE" AND "ATTACHED" AND THE COURT PUT IN SOME ADDITIONAL  
24 LIMITATIONS ON THOSE FROM THE SPECIFICATION.

25 THE FEDERAL CIRCUIT SAID, HOLD ON. WHEN YOU HAVE A PLAIN

1 MEANING TERM, "FLEXIBLE," THAT GETS ITS PLAIN MEANING.

2 "ATTACHED" GETS ITS PLAIN MEANING. YOU DON'T ADD IN ADDITIONAL  
3 THINGS. THE ONLY TIME YOU DO IS IF THE PATENTEE EXPRESSLY  
4 REDEFINES THE TERM, ACTS AS THEIR OWN LEXICOGRAPHER.

5 SO IF SENTIUS HAD SAID, "BY 'SYNDICATING,' WE MEAN  
6 'AUTOMATIC NETWORK DISTRIBUTION,'" FINE. NONE OF US WOULD BE  
7 ARGUING ABOUT THIS.

8 OR IF THERE'S SOME CLEAR DISAVOWAL OF CLAIM SCOPE. I  
9 DIDN'T HEAR ANY ARGUMENTS ABOUT THAT TODAY. THERE'S A LITTLE  
10 BIT IN THE BRIEFING THAT WE'LL TOUCH ON.

11 BUT OUR VIEW IS NEITHER OF THOSE EXCEPTIONS APPLY.  
12 "SYNDICATING," WHEN YOU LOOK AT THE DEFINITIONS, THE VERB  
13 DEFINITIONS, "PUBLISH THROUGH A SYNDICATE." "SELL THROUGH A  
14 SYNDICATE FOR PUBLICATION." "PUBLISH SIMULTANEOUSLY IN A  
15 NUMBER OF PERIODICALS."

16 WE'VE SAID "DISTRIBUTE," TO SELL OR PUBLISH. IT'S GETTING  
17 IT OUT THERE IS THE POINT, WE BELIEVE.

18 AND THAT'S IT.

19 THE COURT: WOULD YOU -- I TAKE IT, THOUGH, FROM YOUR  
20 ARGUMENT THAT YOU WOULD HAVE A LITTLE PROBLEM IF THE COURT  
21 SIMPLY INSTRUCTED THE JURY TO APPLY THE PLAIN AND ORDINARY  
22 MEANING OF "SYNDICATE."

23 MR. LAMBERSON: I THINK THE COURT CAN'T DO THAT NOW  
24 GIVEN THAT THE PARTIES ARE DISPUTING IT. I THINK 02 MICRO  
25 TELLS US THAT THERE IS A DISPUTE -- WELL, I GUESS HERE'S WHAT I

1 SHOULD SAY.

2 THE COURT: THIS IS A REALLY INTERESTING QUESTION,  
3 BECAUSE I'VE WRESTLED WITH THIS IN SOME OTHER CASES, TOO. IT'S  
4 CLEAR THAT YOU HAVE A DIFFERENCE OF OPINION HERE ABOUT WHAT  
5 THIS TERM MEANS, AND YET, AT THE END OF THE DAY, IF THE COURT  
6 IS AS SATISFIED THAT THE TERM ITSELF INSTRUCTS THE JURY  
7 SUFFICIENTLY, OR AT LEAST AS SUFFICIENTLY AS ANY ADDITIONAL  
8 CONSTRUCTION, I WONDER IF, UNDER 02, I STILL HAVE THAT  
9 DISCRETION.

10 MR. LAMBERSON: HERE'S WHAT I WOULD SAY, YOUR HONOR,  
11 AND THIS IS WHAT WE SAID FOR "RECEIVING." IF THE COURT WERE TO  
12 SAY TO THE JURY, "'SYNDICATING' GETS ITS PLAIN MEANING, WHICH  
13 EXPRESSLY DOES NOT MEAN THAT IT HAS TO BE AUTOMATIC OR OVER THE  
14 NETWORK."

15 AND YOU DON'T EVEN HAVE TO TELL THE JURY THAT. FRANKLY,  
16 AS LONG AS YOU ARE CLEAR TO THE PARTIES, I THINK THAT THIS  
17 DISPUTE WILL BE OVER BECAUSE ALL OF OUR ACCUSED PRODUCTS WERE  
18 OUT THERE BEFOREHAND.

19 I'M HOPING AT THAT POINT -- THIS SEEMS TO BE SENTIUS' ONLY  
20 ARGUMENT TO AVOID INVALIDITY, SO I ASSUME THAT THEY WOULD DROP  
21 THE PATENTS AT THAT POINT.

22 BUT AS LONG AS YOUR HONOR IS CLEAR THAT THOSE ARE NOT  
23 REQUIREMENTS OF SYNDICATION, I THINK THAT WOULD PROBABLY BE  
24 SUFFICIENT.

25 THE COURT: AS YOU POINT OUT, THOUGH, CERTAINLY ONE

1           COULD READ 02 AS SUGGESTING THAT I HAVE TO DO SOMETHING HERE.

2                   MR. LAMBERSON: I THINK YOU HAVE TO -- IF SENTIUS  
3           WERE TO SAY THAT THE PLAIN MEANING OF "SYNDICATE" INCLUDES  
4           AUTOMATIC AND NETWORK DISTRIBUTION, THEN THERE CERTAINLY WOULD  
5           BE A DISPUTE.

6                   IF SENTIUS ACKNOWLEDGED THAT PLAIN MEANING DOES NOT  
7           REQUIRE THOSE TWO THINGS, THEN I THINK THERE WOULDN'T BE AND WE  
8           COULD ALL AGREE TO THAT, BUT WE WOULD JUST NEED TO GET IT ALL  
9           CLEAR ON THE RECORD.

10                  ALL RIGHT. SO WHAT DO THE PATENTS SAY? SENTIUS SHOWED  
11           YOU A LOT OF LANGUAGE IN THE PATENTS TALKING ABOUT THINGS,  
12           VARIOUS THINGS BEING AUTOMATIC.

13                  WHAT THEY CAN'T SHOW YOU IS ANY PLACE WHERE IT SAYS  
14           "AUTOMATICALLY SYNDICATING." IT'S NOT IN THERE.

15                  THEY CLEARLY KNEW HOW TO USE THE WORD "AUTOMATIC." IT'S  
16           IN THE PATENT 20-SOME TIMES. THEY DESCRIBE VARIOUS THINGS AS  
17           BEING AUTOMATIC.

18                  THE ONE THAT SENTIUS SORT OF FOCUSES ON MOST IS THE  
19           SYNCHRONIZATION PIECE. NOW, JUST TO BE CLEAR, SYNDICATION AND  
20           SYNCHRONIZATION ARE TWO COMPLETELY DIFFERENT PIECES HERE OF THE  
21           CLAIMED INVENTION.

22                  SYNCHRONIZATION IS THE INITIAL -- I'M SORRY. SYNDICATION  
23           IS THE INITIAL DISTRIBUTION, AND THEN AFTERWARDS, YOU MAY NEED  
24           TO SYNCHRONIZE.

25                  THE COURT: AND AM I RIGHT IN UNDERSTANDING THAT YOU

1 MAY CONCEDE THAT SYNCHRONIZATION MAY HAVE TO BE AUTOMATED, BUT  
2 YOU'RE CERTAINLY NOT --

3 MR. LAMBERSON: EVEN THERE, YOUR HONOR, IF YOU LOOK  
4 AT THE DISCLOSURE, ALL IT SAYS IS THAT SYNCHRONIZATION OF DATA  
5 CAN BE SCHEDULED SO THAT TRANSFERS OCCUR AUTOMATICALLY. SO IT  
6 SUGGESTS YOU COULD DO IT AUTOMATICALLY. I DON'T THINK IT  
7 REQUIRES IT.

8 AND THERE ARE SEPARATE CLAIMS THAT JUST SAY IT'S  
9 SYNCHRONIZED. THEY DON'T SAY IT'S AUTOMATIC.

10 WHERE THE PATENTEE WANTS TO CLAIM AUTOMATIC, THEY DO SO.  
11 THIS IS CLAIM 21. IT TALKS ABOUT AUTOMATICALLY ASSOCIATING A  
12 TERM WITH A LINK. SO THAT PART OF IT, YES, IS AUTOMATIC. AND  
13 THEY KNOW HOW TO CLAIM THAT.

14 THEY DIDN'T CLAIM "AUTOMATICALLY SYNDICATING." THEY  
15 DIDN'T EVEN CLAIM "AUTOMATICALLY SYNCHRONIZING."

16 AND I THINK, YOU KNOW, THE INTERESTING THING HERE,  
17 SENTIUS -- I HAD TO LOOK UP WHETHER THIS IS ACTUALLY AN ADVERB,  
18 IF THAT'S THE RIGHT WAY TO CALL IT, AND I THINK IT IS, MY  
19 ENGLISH IS A LITTLE RUSTY, ENGLISH LESSONS -- BUT SENTIUS ON  
20 THE ONE HAND, THEY KEEP POINTING TO THE TITLE AND THEY SAY THE  
21 TITLE REFERS TO AUTOMATED CREATION AND DELIVERY; THEREFORE,  
22 AUTOMATED DELIVERY IS THIS INVENTION.

23 WELL, WHEN WE POINT OUT THAT THERE'S OTHER INSTANCES  
24 DESCRIBING WHAT EVERYBODY AGREES IS A PREFERRED EMBODIMENT, AND  
25 IT SAYS "AUTOMATICALLY CREATE SYNDICATING LINK," AND WE SAY,

1 "WELL, THAT SHOULD APPLY TO ALL THREE AS WELL. 'AUTOMATICALLY'  
2 WOULDN'T HAVE BEEN NECESSARY IF 'SYNDICATE' WERE AUTOMATIC."

3 SENTIUS SAYS, "OH, NO, 'AUTOMATICALLY' JUST MODIFIES  
4 'CREATE' HERE."

5 WELL, IT'S TWO PAGES SEPARATE IN THEIR BRIEFING. IT CAN'T  
6 BE BOTH.

7 AND THE OTHER THING I'D POINT OUT -- SO WHAT WE BELIEVE IS  
8 THAT WHEN SENTIUS WANTS TO CALL SOMETHING AUTOMATIC, WANTS TO  
9 CLAIM SOMETHING IS AUTOMATIC, THEY DO SO. WHEN THEY DON'T,  
10 THEY DON'T.

11 AND THEY HAVEN'T POINTED YOU TO A SINGLE INSTANCE WHERE  
12 THEY REDEFINE THE TERM OR DISCLAIMED ANYTHING BECAUSE IT WAS  
13 AUTOMATIC, LET ALONE OVER THE NETWORK. I DON'T THINK WE SAW  
14 ANY SLIDES ON WHERE THE SPECIFICATION REQUIRES NETWORK  
15 DISTRIBUTION.

16 AND ONE OTHER POINT ON THE TITLE, YOUR HONOR. I WOULD  
17 JUST POINT YOU TO THE PITNEY BOWES CASE. WE CITED IT IN OUR  
18 BRIEFING. IT -- THAT CASE SAYS THE TITLE IS IRRELEVANT TO  
19 CLAIM CONSTRUCTION, OR NEARLY IRRELEVANT, SOMETHING TO THAT  
20 EFFECT. SO JUST --

21 THE COURT: IT KEEPS THE DOOR OPEN, I THINK IT'S FAIR  
22 TO SAY.

23 MR. TRIBBLE: THAT'S RIGHT.

24 BUT EVEN IF YOU WERE TO LOOK AT THE TITLE, AGAIN, OR IN  
25 ANY OF THESE OTHER LOCATIONS, THIS ONE I THINK IS PERHAPS --

1       YOU KNOW, SENTIUS' BEST ARGUMENT IS THEY CITE TO THIS ONE  
2       PASSAGE IN COLUMN 2 OF THE '985 PATENT, AND IT TALKS ABOUT  
3       AUTOMATICALLY DOWNLOADING NECESSARY PIECES.

4               WELL, FIRST OF ALL, THIS DOESN'T USE THE WORD "SYNDICATE."  
5       IT DOESN'T REDEFINE THE WORD "SYNDICATE." THEY'RE CERTAINLY  
6       ENTITLED TO DESCRIBE THEIR INVENTION HOWEVER THEY LIKE, BUT  
7       WHEN THEY USE A DIFFERENT CLAIM TERM, IF THEY DIDN'T REDEFINE  
8       IT, THEY'RE STUCK WITH THAT TERM. AND THIS DOESN'T REDEFINE  
9       "SYNDICATE" IN ANY WAY THAT WE CAN SEE. THERE'S NO DISAVOWAL  
10      ANYWHERE IN THIS STATEMENT.

11             AT MOST WE HAVE HERE A DISCUSSION ABOUT A PREFERRED  
12      EMBODIMENT, AND I THINK YOUR HONOR WAS RIGHT ON THE MARK WHEN  
13      YOU SAID, HOW CAN IT BE THAT IF WE'RE NOT GOING TO LIMIT  
14      SENTIUS TO THE ADDRESS EMBODIMENT IN THE EARLIER PATENTS --  
15      WHICH OUR CONSTRUCTION DOESN'T, BY THE WAY -- BUT IF WE'RE NOT  
16      GOING TO DO THAT, THEN HOW CAN IT BE THAT WE'RE GOING TO TAKE  
17      THIS ONE STATEMENT THAT DOESN'T EVEN USE THE WORD "SYNDICATING"  
18      AND SAY THAT THIS -- AND DOESN'T TALK ABOUT NETWORK  
19      DISTRIBUTION -- AND SAY THAT THIS IS A REQUIREMENT FOR THIS  
20      SYNDICATION LIMITATION? IT'S JUST -- IT'S JUST INCONSISTENT.

21             THERE -- I DIDN'T HEAR IT TODAY, BUT THERE WAS A MENTION  
22      IN THE BRIEFING ABOUT PROSECUTION HISTORY DISCLAIMER. WE DON'T  
23      THINK THAT THERE IS ONE.

24             IF YOU LOOK AT THE PROSECUTION HISTORY, EXHIBIT 12 I  
25      BELIEVE TO SENTIUS' OPENING DECLARATION, WHAT THE PATENTEE WAS

1 SAYING IS THEY HAD THIS REFERENCE, GARNER, IT COULD EXPORT DATA  
2 LOCALLY, BUT IT DIDN'T SEND IT ANYWHERE.

3 THEY SAID, "THAT'S NOT OUR INVENTION. OUR INVENTION TALKS  
4 ABOUT REMOTE MACHINES. YOU HAVE TO SEND IT THROUGH A REMOTE  
5 MACHINE."

6 THEY NEVER SAID GARNER SENDS IT, BUT IT'S NOT AUTOMATIC.  
7 THEY NEVER SAID GARNER SENDS IT, BUT IT'S NOT OVER A NETWORK.

8 AND THIS IS SORT OF A SILLY SLIDE, BUT WHAT ARE WAYS YOU  
9 COULD SYNDICATE NOT OVER A NETWORK? NOT AUTOMATICALLY? YOU  
10 KNOW, YOU COULD HAVE DIFFERENT MEDIA. YOU COULD HAVE A CD.  
11 YOU COULD HAVE A DISK, A USB DRIVE. YOU KNOW, FOR ARTICLES,  
12 YOU COULD HAVE IT OVER THE MAIL. I ASSUME TODAY IT'S MORE  
13 ELECTRONIC.

14 AND TO THIS POINT ABOUT THE PREAMBLE, SO THEY SEEM TO  
15 SUGGEST, WELL, A CD WOULDN'T BE -- YOU KNOW, SYNDICATING BY CD  
16 WOULDN'T BE MEETING THE PREAMBLE, WHICH IS A COMPUTER  
17 IMPLEMENTED METHOD.

18 WELL, FIRST OF ALL, WE KNOW THAT PREAMBLES GENERALLY ARE  
19 NOT LIMITING, AND I DON'T BELIEVE THESE ARE.

20 BUT EVEN IF YOU WERE TO CONSIDER THAT, IT STILL DOESN'T  
21 GET YOU TO AUTOMATIC AND OVER A NETWORK.

22 AND SO LET'S THINK ABOUT IT. WHAT ARE SOME WAYS YOU COULD  
23 DISTRIBUTE NOT AUTOMATICALLY? LET'S TAKE NETWORK OUT OF THE  
24 PICTURE FIRST.

25 WELL, YOU COULD HAVE THE USER CLICK A DOWNLOAD BUTTON AND



1 THEN THE DATABASE IS SYNDICATED. IT'S NOT AUTOMATIC. THE USER  
2 HAD TO DO SOMETHING.

3 BUT THE DISTRIBUTION STILL GOES FROM A SERVER TO A CLIENT  
4 OVER A NETWORK. OUR VIEW IS THAT SHOULD BE SYNDICATION.

5 YOU COULD HAVE THE USER, YOU KNOW, RUN A BATCH FILE, IT  
6 GOES AND PULLS IT FROM SOMEWHERE.

7 YOU COULD HAVE A USER CLICK AN "I AGREE" BUTTON BEFORE  
8 THEY INSTALL IT. YOU KNOW, DO YOU WANT TO INSTALL? YES OR NO?  
9 YES.

10 NOW, YOU KNOW, THE CLAIMS DON'T REQUIRE OR EXCLUDE ANY OF  
11 THAT. BUT THE POINT IS, NEITHER DID THE SYNDICATION. THE  
12 SYNDICATION PIECE OF IT JUST DEALS WITH THE DISTRIBUTION OF THE  
13 DATABASE, AND WE SHOULDN'T BE BRINGING IN THIS ADDITIONAL  
14 CONCEPT ABOUT WHAT THE USER DOES OR DOESN'T HAVE TO DO OR WHAT  
15 THE SYSTEM DOES OR DOESN'T HAVE TO DO. AS LONG AS IT'S  
16 DISTRIBUTED, THAT SHOULD BE SYNDICATION.

17 AND THEN HOW ABOUT THE NETWORK PIECE? WELL, YOU COULD  
18 HAVE SYNDICATION NOT OVER WHAT WE WOULD CALL A NETWORK. YOU  
19 COULD HAVE COMPUTERS CONNECTED BY A MODEM. TYPICALLY THAT'S A  
20 DIRECT CONNECTION BETWEEN TWO. IT'S NOT A NETWORK. OUR VIEW  
21 IS THAT WOULD BE SYNDICATION.

22 SCSI IS AN INTERFACE, YOU CAN CONNECT MULTIPLE MACHINES,  
23 TYPICALLY NOT CONSIDERED A NETWORK. IT'S A DIRECT CABLE  
24 CONNECT BETWEEN ALL OF THEM IN LIKE A ROUND, A CIRCLE.

25 IN OUR VIEW, THERE'S JUST NOTHING THAT EXCLUDES ANY OF

1       THESE WHEN YOU HAVE A TERM LIKE "SYNDICATING" THAT IS,  
2       EVERYBODY AGREES IT'S A PLAIN MEANING TERM, AND WHEN YOU HAVE A  
3       SPECIFICATION THAT REALLY DOESN'T ADD EITHER OF THOSE  
4       LIMITATIONS, THAT -- AT MOST, MAYBE A PREFERRED WAY TO DO IT  
5       WOULD BE AUTOMATIC, SURE.

6               A PREFERRED WAY TO DO IT MIGHT BE OVER A NETWORK, EVEN  
7       THOUGH IT'S NOT DISCUSSED. BUT IT'S NOT A REQUIREMENT FOR  
8       SYNDICATION.

9               THE COURT: CAN YOU GO BACK TO SLIDE 56 FOR A MOMENT?

10              MR. LAMBERSON: YES.

11              THE COURT: THANK YOU. SO I WANT TO UNDERSTAND  
12       GARNER AND WHAT'S BEING SAID ABOUT GARNER HERE A LITTLE BIT  
13       BETTER.

14              IN GARNER, WAS THERE ANY DISCUSSION AT ALL ABOUT HOW THE  
15       SYNDICATION WAS PERFORMED? IN OTHER WORDS, DOES GARNER -- AND  
16       IT MAY NOT ULTIMATELY MATTER BECAUSE WHAT MATTERS IS HOW THAT  
17       IS DISTINGUISHED, I THINK I GET THAT PART -- BUT I SEE THAT THE  
18       EXAMINER CHARACTERIZED GARNER AS SIMPLY "SYNDICATING GENERALLY"  
19       WITHOUT REALLY ANY SPECIFIC DISCUSSION BEYOND THAT.

20              MR. LAMBERSON: YEAH. I BELIEVE WHAT WAS AT ISSUE IN  
21       GARNER, YOUR HONOR -- AND GARNER IS EXHIBIT K TO MICROSOFT'S  
22       DECLARATION, A FAIRLY LENGTHY REFERENCE.

23              BUT I BELIEVE WHAT THE PATENT OFFICE WAS REFERRING TO WAS  
24       JUST THIS TABULATION FUNCTION THAT TOOK A TABLE IN A DATABASE  
25       AND EXPORTED IT AND IT DIDN'T SAY WHERE IT WENT.

1           AND THE IMPLICATION TO ME WOULD BE WHEN YOU'RE EXPORTING,  
2           IT WOULD GO TO A LOCAL MACHINE.

3           AND SENTIUS' POINT IN RESPONSE WAS, "OUR CLAIMS REQUIRE  
4           SYNDICATION TO A REMOTE MACHINE."

5           THERE'S NO DISCUSSION IN GARNER OF TAKING THIS EXPORT  
6           AND -- THEY SAY IT DOESN'T SAY SENDING IT TO ANY SERVER, MUCH  
7           LESS A REMOTE SERVER. THAT I TAKE IS THE POINT, THAT THERE'S A  
8           COMPLETE LACK OF DISTRIBUTION.

9           AND ONE OTHER POINT HERE, YOUR HONOR. I THINK SENTIUS  
10          ACCURATELY DESCRIBED IT, BUT I JUST WANTED TO COME BACK TO YOUR  
11          CONFUSION. I SHOULDN'T SAY "CONFUSION," BUT YOUR  
12          CLARIFICATION.

13                THE COURT: GO AHEAD AND SAY IT.

14                MR. LAMBERSON: I APOLOGIZE, YOUR HONOR.

15                THE COURT: I'LL COP TO THAT.

16                MR. LAMBERSON: WELL, I'LL SAY I WAS CONFUSED ABOUT  
17          THE PATENT'S USE OF THESE -- OF THIS TERM "SERVER" IN BOTH  
18          LOCATIONS.

19                BUT THIS AGAIN GOES TO WHAT SENTIUS WAS ORIGINALLY  
20          CLAIMING AND SORT OF NOW HOW THEY'VE MORPHED THAT INTO THE  
21          CURRENT DAY.

22                IF YOU READ THE PATENTS ORIGINALLY, YOU DID HAVE THIS  
23          CENTRAL PLACE WHERE PEOPLE, WHERE EXPERTS WERE USING THEIR,  
24          THEIR MOUSE TO ENTER ANNOTATIONS ASSOCIATED WITH WORDS, AND  
25          THEN THAT WOULD GET SENT OUT TO THIS RICHLINK PROCESSOR SERVER.

1           THAT'S NOT A CLIENT MACHINE. IT'S ACTUALLY -- YOU KNOW,  
2           SO SAY AOL WANTED TO HAVE THEIR OWN SERVER AND THEY WANTED  
3           USERS TO BE ABLE TO TAKE THEIR DOCUMENTS, THEIR SOURCE  
4           DOCUMENTS, THEN THEY WOULD TAKE THEM AND THEY WOULD ADD THE  
5           LINK.

6           THE COURT: RIGHT. THIS IS A SERVER SORT OF  
7           ARCHITECTURE, NOT A CLIENT SERVER.

8           MR. LAMBERSON: THAT'S WHAT'S IN THE PATENT. THERE'S  
9           NO DISCUSSION ABOUT SENDING IT TO CLIENTS.

10          NOW, NOBODY IS SAYING SENTIUS' CLAIMS ARE LIMITED TO THAT.  
11          THEY HAVE CLAIMS NOW THAT REALLY DON'T SAY ONE WAY OR THE OTHER  
12          WHERE IT'S SENT TO. THEY JUST SAY IT'S SENT.

13          BUT THAT IS WHAT THE PATENTS, YOU KNOW, ORIGINALLY ARE  
14          TALKING ABOUT.

15          AND THIS WILL COME UP IN THE "MODULE" ISSUE AS WELL. YOU  
16          KNOW, WHAT YOU DON'T HAVE IN THESE PATENTS IS REALLY ANY  
17          DISCUSSION ABOUT WHAT THESE SERVERS DO OTHER THAN JUST A  
18          REFERENCE TO THE '720 PATENT, AND THE '720 PATENT DOES DESCRIBE  
19          THESE RICHLINK PROCESSOR SERVERS.

20          IN ANY EVENT, I DON'T KNOW IF WE -- I DIDN'T SEE SLIDES ON  
21          "RECEIVING." WE HAVE ONE SLIDE ON RECEIVING. I DON'T KNOW IF  
22          IT MAKES SENSE FOR ME TO TALK ABOUT THAT.

23          THE COURT: MR. TRIBBLE?

24          MR. TRIBBLE: I CAN ADDRESS THAT, YOUR HONOR.

25          WE'RE NOT GOING TO ASSERT ANY CLAIMS FROM THAT PATENT, SO

1 WE THINK IT'S MOOT. I MEAN, THE SAME ARGUMENTS WOULD APPLY,  
2 BUT WE THINK IT'S MOOT AND DOESN'T NEED TO BE CONSTRUED.

3 THE COURT: ALL RIGHT. I APPRECIATE THAT  
4 CLARIFICATION.

5 MR. LAMBERSON: OKAY.

6 THE COURT: THANK YOU, MR. LAMBERSON.

7 MR. LAMBERSON: THANK YOU.

8 THE COURT: MR. SETH, ANY REBUTTAL?

9 MR. SETH: SINCE I'M COMING BACK UP ANYWAY.

10 YOUR HONOR, I THINK, YOU KNOW, THIS IS PROBABLY A VERY  
11 GOOD EXAMPLE OF WHY YOU CAN'T JUST RELY ON DICTIONARIES, WHY WE  
12 ARE ENJOINED TO LOOK AT THE SPECIFICATION TO REALLY FIGURE OUT  
13 WHAT IS MEANT WHEN THERE'S A CLAIM TERM THAT IS AMBIGUOUS,  
14 ADMITTEDLY.

15 BUT THERE'S ABSOLUTELY NO POSITION THAT WE'RE TAKING THAT  
16 THERE'S A PLAIN MEANING HERE, OKAY, AND I THINK IN JUST LOOKING  
17 AT THE DICTIONARIES, THEY'RE ALL OVER THE PLACE AS TO IS IT  
18 SIMULTANEOUS? IS IT NOT? WHAT IS IT?

19 SO I THINK 02 WOULD REQUIRE A CONSTRUCTION.

20 THE COURT: ALL RIGHT. I APPRECIATE YOUR CONFIRMING  
21 THAT.

22 MR. SETH: YOU'RE NOT GETTING OFF THAT EASILY.

23 THE COURT: OKAY. I APPRECIATE YOUR CONFIRMING THAT.

24 MR. SETH: RIGHT. YEAH. AND THEN THE NON -- AND THE  
25 NON-REQUIREMENT OF SIMULTANEOUS DELIVERY I THINK IS A PERFECT

1 EXAMPLE OF WHY DICTIONARIES DON'T APPLY.

2 AND THERE'S ALSO NO DISPUTE THAT "SYNDICATING" AND  
3 "SYNCHRONIZING" ARE TWO DIFFERENT THINGS, BUT OUR POINT IS THAT  
4 UNLESS YOU HAVE THE AUTOMATED DELIVERY SYSTEM, YOU'RE NOT GOING  
5 TO GET TO THE SPECIFICATION DESCRIBING THE AUTOMATED  
6 SYNCHRONIZATION AS WELL.

7 THE COURT: CAN WE JUST TAKE A LOOK AT THAT SECTION  
8 ONE MORE TIME, IF WE COULD? I THINK IT'S IMPORTANT THAT I  
9 APPRECIATE THAT POINT AS CLEARLY AS I CAN.

10 MR. SETH: SURE.

11 THE COURT: SO WHERE IN --

12 MR. SETH: YEAH, LET ME JUST GET YOU THERE.

13 THE COURT: IF YOU COULD DIRECT ME, I'D APPRECIATE  
14 IT, TO WHERE IT TALKS ABOUT SYNCHRONIZATION. I GUESS IT'S  
15 COLUMN 12. IS THAT RIGHT? 95, DATA SYNCHRONIZERS.

16 MR. SETH: CAN WE GO TO COLUMN 12?

17 THE COURT: YEAH, I'M LOOKING AT LINE, MAYBE 42, GIVE  
18 OR TAKE, OF COLUMN 12. YEAH, THERE IT IS.

19 MR. SETH: WELL, THERE -- THERE'S A BIDIRECTIONAL  
20 ASPECT AS WELL.

21 THE COURT: OKAY.

22 MR. SETH: SO THERE ARE -- WHAT WE WERE REFERRING TO  
23 EARLIER WAS A PORTION OF THE SPECIFICATION THAT WAS ACTUALLY  
24 TALKING ABOUT SOMETHING ON THE RICHLINK PROCESSOR THAT WAS  
25 REFERRED TO AS THE LEXICON MANAGER --

1 THE COURT: UM-HUM.

2 MR. SETH: -- AND A TEMPLATE MANAGER, AND THAT WAS  
3 THE MODULE THAT WENT AND GOT THE DATABASES FROM THE CENTRAL  
4 SERVER.

5 AND HERE WE'RE TALKING ABOUT MODULES THAT IF THERE WAS A  
6 CHANGE MADE AT THE REMOTE COMPUTER RUNNING --

7 THE COURT: I SEE.

8 MR. SETH: -- THEN WE COULD SYNCHRONIZE THAT BACK TO  
9 IF WE WANTED.

10 THE COURT: OKAY.

11 MR. SETH: AND SO THERE'S NO DISPUTE, YOUR HONOR,  
12 THAT "SYNCHRONIZATION" AND "SYNDICATION" ARE TWO DIFFERENT  
13 THINGS.

14 AND I THINK THE ONLY OTHER POINT I WOULD MAKE IS THAT  
15 WE -- GOING BACK TO THE FIGURE WHERE WE SEE THE CENTRAL  
16 PROCESSOR, THE RICHLINK PROCESSOR IS ALSO REFERRED TO AS A  
17 PROCESSOR, IT'S TRUE.

18 BUT IT IS CERTAINLY A CLIENT OF THE, OF THE CENTRAL SERVER  
19 AS WELL, EVEN THOUGH IT MAY BE A SERVER FOR OTHER COMPUTERS.

20 THE COURT: RIGHT, RIGHT.

21 MR. SETH: OKAY. ALL RIGHT.

22 SO I THINK OUR NEXT TOPIC HAS TO DO WITH THE MODULE AND  
23 THE PROCESSOR LIMITATIONS AND WHETHER OR NOT THESE ARE ACTUALLY  
24 MEANS-PLUS-FUNCTION ELEMENTS.

25 OUR POSITION, OF COURSE, IS THAT THEY ARE NOT

1 MEANS-PLUS-FUNCTION ELEMENTS BECAUSE, IN THE FIRST PLACE, MEANS  
2 WAS NOT USED IN THE CLAIMS, AND CERTAINLY COULD HAVE BEEN, AS  
3 IT WAS USED IN OTHER CLAIMS.

4 BUT THE TERM "MODULE," "PROCESSING MODULE," "PROCESSOR  
5 MODULE," THESE CLAIM ELEMENTS DO NOT RECITE THE MEANS, THE  
6 STATUTORY LANGUAGE FOR THE MEANS-PLUS-FUNCTION AND, THEREFORE,  
7 THERE IS A STRONG PRESUMPTION THAT THEY'RE NOT SUBJECT TO 112.

8 AND THEN THE QUESTION IS, IS THERE ANYTHING TO REBUT THAT  
9 PRESUMPTION? OKAY?

10 AND SO ONCE AGAIN, WE'LL -- YOU KNOW, FIRST OF ALL, BEFORE  
11 WE EVEN GET TO THE SPECIFICATION, AND I THINK THIS IS  
12 ADEQUATELY BRIEFED, THERE'S A LOT OF CASE LAW OUT THERE THAT,  
13 YOU KNOW, MODULES ARE NOT MEANS-PLUS-FUNCTION ELEMENTS. THEY  
14 RECITE SUFFICIENT STRUCTURE.

15 AND I THINK WHAT'S IMPORTANT, JUST TO SKIP TO THE  
16 SPECIFICATION, IS THAT THROUGHOUT THE SPECIFICATION OF THE '85  
17 PATENT, WE'RE TALKING ABOUT SOFTWARE RUNNING ON A PROCESSOR.  
18 THAT'S WHAT WE'RE TALKING ABOUT.

19 AND WE'RE TALKING ABOUT VARIOUS COMPONENTS THAT DO VARIOUS  
20 THINGS.

21 AND CONSISTENTLY THROUGHOUT THAT SPECIFICATION, THOSE  
22 COMPONENTS OF -- THOSE SOFTWARE COMPONENTS THAT ARE RUNNING ON  
23 A PROCESSOR ARE REFERRED TO AS "MODULES," AND THAT'S -- THAT'S  
24 BASICALLY THE ESSENCE OF WHY IT IS NOT -- AND, YOU KNOW, I  
25 PROVIDE EXAMPLES OF THE RICHLINK PROCESSOR SYSTEM BEING



1 REFERRED TO AS REALLY A SET OF MODULES, THE MODULES IN THIS  
2 CORE COMPONENT GROUP. THE RICHLINK PROCESSOR ITSELF IS ALSO  
3 REFERRED TO AS A MODULE.

4 AND THEN HERE WE SEE, FOR THE TERM "FINDER MODULE," WHICH  
5 IS NOT A PART OF THE ASPECT THAT WE ARE CLAIMING AS  
6 INFRINGEMENT HERE BECAUSE WE'RE NOT TALKING ABOUT THE DATABASE  
7 CREATION, WE'RE TALKING ABOUT THE DATABASE DELIVERY AND THE USE  
8 OF THE DATABASE AT THE REMOTE PROCESSOR, BUT HERE I THINK IT'S  
9 IMPORTANT THAT IT'S REFERRING TO A FLOW CHART FOR THE MODULE,  
10 AGAIN SHOWING THAT WE'RE TALKING ABOUT THE SOFTWARE.

11 AND HERE THERE'S ANOTHER CALL OUT FOR THE RICHLINK CONTENT  
12 EDITOR THAT IS A MODULE, AND IT'S REFERRED TO AS AN  
13 APPLICATION, AGAIN INDICATING WE'RE TALKING ABOUT SOFTWARE.

14 AND THEN THE DATA SYNCHRONIZERS THAT YOU POINTED OUT  
15 EARLIER THAT DO THE REVERSE SYNCHRONIZATION ARE MODULES.

16 SO, YOU KNOW, THE SPECIFICATION IS REplete THAT MODULES  
17 ARE SIMPLY DATA -- SOFTWARE RUNNING ON A PROCESSOR, AND THAT'S  
18 WHAT I'VE GOT ON THAT.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. LAMBERSON.

21 MR. LAMBERSON: SO, YOUR HONOR, STARTING WITH SORT OF  
22 I GUESS FIRST PRINCIPLES HERE, PURELY FUNCTIONAL CLAIM LANGUAGE  
23 IS VERY POWERFUL. IF YOU DESCRIBE SOMETHING ONLY BY WHAT IT  
24 DOES, YOU'RE BASICALLY EXCLUDING EVERYBODY ELSE IN THE COUNTRY  
25 FROM DOING THE SAME THING IN ANY MANNER USING ANY STRUCTURES.

1           THAT'S WHY, IN 1946, THE SUPREME COURT STRUCK DOWN CLAIMS  
2           THAT USE THAT TYPE OF CLAIMING.

3           IT'S ALSO WHY CONGRESS PASSED A VERY LIMITED EXCEPTION TO  
4           THAT, NOW CALLED 112(F), IN ALL THE CASE LAW IT WAS 112(6) --  
5           THANKS TO CONGRESS FOR RECODIFYING THAT -- IN ORDER TO ALLOW  
6           CERTAIN FUNCTIONAL CLAIMING, BUT ONLY IF YOU PAID A PRICE.

7           YOU CAN DO A FUNCTIONAL CLAIM, BUT YOU HAVE TO TELL THE  
8           WORLD IN YOUR PATENT WHAT STRUCTURE YOU'RE TALKING ABOUT.

9           AND YOU'RE NOT LIMITED TO JUST THAT STRUCTURE. YOU ALSO  
10          GET ANY EQUIVALENT TO THAT STRUCTURE.

11          WE KNOW FROM THE FEDERAL CIRCUIT FROM MULTIPLE CASES THAT  
12          THE WORDS "MEANS FOR" ARE NOT REQUIRED. CASES -- CLAIMS THAT  
13          DON'T USE "MEANS FOR," THERE IS A REBUTTABLE PRESUMPTION THAT  
14          112(6) DOES NOT APPLY.

15          BUT WHEN YOU HAVE A CLAIM WHERE THERE IS NOT STRUCTURE IN  
16          THE CLAIM, IN THE CLAIM, FOR PERFORMING THAT FUNCTION, THEN  
17          THAT PRESUMPTION IS OVERCOME.

18          AND SENTIUS FOCUSSED A GREAT DEAL ON WHAT'S SHOWN IN THE  
19          SPECIFICATION ABOUT THESE MODULES.

20          I'M SORRY. LET ME GET SOME WATER.

21          THE COURT: SURE.

22          (PAUSE IN PROCEEDINGS.)

23          MR. LAMBERSON: BUT ALL WE HAVE IN THE CLAIMS -- NONE  
24          OF THE STRUCTURES UNDERLYING THOSE MODULES ARE IN THE CLAIMS.  
25          ALL IT SAYS IS "A TERM MODULE FOR," AND THEN IT GIVES A

1 FUNCTION. "A PROCESSING MODULE FOR," AND THEN A FUNCTION.

2 SAME THING FOR "PROCESSOR" AND THEN JUST THE BARE TERM  
3 "MODULE" BY ITSELF.

4 SENTIUS HASN'T MADE AN ARGUMENT THAT -- THIS POPS UP IN  
5 CERTAIN CASES WHERE THE PARTIES WILL SAY, "WELL, 'TERM MODULE,'  
6 BY ITSELF, IS SOMETHING THAT EVERYBODY KNOWS WHAT 'TERM MODULE'  
7 IS. THE WHOLE WORLD KNOWS THAT. IT'S IN THE DICTIONARY."

8 NOT THE CASE HERE. WE DON'T HAVE ANY EVIDENCE OF THAT.

9 "PROCESSING MODULE" IS THE SAME.

10 AND WHAT WE KNOW IS YOU HAVE THESE WORDS LIKE "PROCESSOR"  
11 OR "MODULE" -- THIS IS FROM THE PATENT OFFICE REGULATIONS,  
12 EXHIBIT N. IT'S CERTAINLY NOT BINDING, BUT THERE'S CASE LAW  
13 THAT SAYS THE SAME THING.

14 "MODULE FOR" IS A NON-STRUCTURAL TERM THAT MAY INVOKE  
15 112(6). SO ALREADY WHEN WE'RE TALKING ABOUT PRESUMPTIONS,  
16 WE'RE ALREADY IN A WORLD WHERE WE KNOW THAT WE HAVE A TERM THAT  
17 OTHER CASES AND THE PATENT OFFICE HAVE SAID CAN TRIGGER 112(6).

18 SO THIS IS NOT A CASE WHERE WE'RE DEALING WITH SOME EXOTIC  
19 CLAIM LANGUAGE THAT NOBODY HAS SEEN BEFORE. "MODULE FOR," AND  
20 THEN YOU HAVE A RECITATION OF A FUNCTION, IS A TERM THAT CAN  
21 CONNOTE THAT KIND OF PURELY FUNCTIONAL CLAIMING.

22 AND "MICROPROCESSOR" IS ANOTHER ONE. WHAT WE HAVE HERE,  
23 THERE ARE MANY, MANY CASES THAT DEAL WITH THE SITUATION WHERE  
24 YOU HAVE A MEANS, ADMITTEDLY MEANS-PLUS-FUNCTION CLAIM, MEANS  
25 FOR MAKING MONEY ON THE STOCK MARKET, AND THEN THE

1 SPECIFICATION WILL SAY YOU CAN MAKE MONEY ON THE STOCK MARKET  
2 USING A COMPUTER.

3 WELL, THE CASE LAW SAYS THAT'S NOT GOOD ENOUGH. YOU NEED  
4 TO GIVE -- IF YOU'RE DEALING WITH A SOFTWARE CLAIM, YOU NEED TO  
5 GIVE AN ALGORITHM. YOU CAN'T JUST SAY TO DO IT WITH A COMPUTER  
6 OR A PROCESSOR RUNNING INSTRUCTIONS. YOU NEED TO SAY WHAT  
7 THOSE INSTRUCTIONS ARE.

8 THE COURT: IN THOSE SITUATIONS, ARE YOU NECESSARILY  
9 DEALING WITH A 112(6) OR 112(F) PROBLEM, OR ARE THERE OTHER  
10 REASONS WHY THAT LIMITATION MAY BE INFORMED?

11 MR. LAMBERSON: THE CASES THAT DEAL WITH THIS THAT  
12 WE'VE CITED IN OUR BRIEFING ARE CASES WHERE IT WAS EITHER  
13 ADMITTEDLY 112(6) OR THERE ALREADY WAS A FINDING OF 112(6).

14 BUT THE SOQUE HOLDINGS CASE, WHICH IS FROM THE NORTHERN  
15 DISTRICT, 2010, POINTS OUT THAT LOGICALLY, IF PUTTING THAT --  
16 IF PUTTING "PROCESSOR," JUST A PROCESSOR IN THE SPEC ISN'T  
17 ENOUGH STRUCTURE TO SUPPORT A MEANS CLAIM, THEN HOW CAN YOU  
18 POSSIBLY SAY LOGICALLY THAT IF I SAY "PROCESSOR IN THE CLAIM"  
19 THAT THAT'S GOOD ENOUGH, THAT THAT'S ENOUGH STRUCTURE?

20 THE COURT: THE POINT OF THE SECTION IS THERE'S GOT  
21 TO BE STRUCTURE SOMEWHERE, AND IF THE STRUCTURE IS INSUFFICIENT  
22 IN ORDER TO PROVIDE 112(F) SUPPORT, IT WOULD BE INSUFFICIENT TO  
23 AVOID 112(F) ALTOGETHER.

24 MR. LAMBERSON: THAT'S THE LOGICAL CONCLUSION. AND  
25 THE REASON WHY IS ARTICULATED IN THESE CASES THAT WE'VE CITED

1        THAT DEAL WITH COMPUTER OR PROCESSOR, AND WHAT THEY SAY IS  
2        SIMPLY DISCLOSING A COMPUTER AS THE STRUCTURE DOESN'T LIMIT THE  
3        SCOPE OF A CLAIM, AND THAT'S BECAUSE A GENERAL PURPOSE COMPUTER  
4        OR A GENERAL PURPOSE PROCESSOR, THEY CAN DO ANYTHING. I MEAN,  
5        YOU CAN PROGRAM A COMPUTER TO DO JUST ABOUT ANY TASK, AND THAT  
6        IS NOT -- SO -- AND I SHOULD SAY, THERE IS A LIMITED EXCEPTION.  
7        IF YOU HAVE A CLAIM WHERE THE FUNCTION CAN BE PERFORMED BY A  
8        GENERAL PURPOSE COMPUTER, A MODULE FOR STORING DATA IN A  
9        MEMORY, A GENERAL PURPOSE COMPUTER CAN DO THAT. YOU MAY NOT  
10       NEED MORE STRUCTURE AT THAT POINT.

11           BUT THAT'S NOT WHAT WE'RE TALKING ABOUT. WE'RE TALKING  
12       ABOUT THINGS THAT WOULD REQUIRE ALGORITHMIC SPECIFICITY,  
13       PARSING THE DOCUMENT TO IDENTIFY TERMS, IDENTIFYING THE  
14       CONTENT. THOSE ARE NOT THINGS THAT A GENERAL PURPOSE COMPUTER  
15       CAN DO JUST OUT OF THE BOX IN ANY SENSE.

16           AND WE'VE CITED CASES THAT ACTUALLY SPECIFICALLY DEAL WITH  
17       "MODULE" AND "PROCESSOR." TO BE SURE, THERE ARE OTHER CASES  
18       THAT HAVE COME OUT THE OTHER WAY. YOU KNOW, THIS IS PROBABLY  
19       NOT AN EXHAUSTIVE LIST. EACH CASE DOES HAVE TO BE ANALYZED ON  
20       THE FACTS.

21           BUT HERE I THINK, YOU KNOW, WHAT WE NEED TO LOOK AT IS  
22       WHAT IS THE -- WHAT WOULD THE STRUCTURE BE FOR THESE CLAIM  
23       LIMITATIONS?

24           AND SO WE TURN TO THE PATENT. SENTIUS CITED AGAIN A LOT  
25       OF DIFFERENT DISCUSSION OF VARIOUS MODULES. THERE ARE OTHER

1 MODULES IN THE PATENTS, AND MAYBE SOME OF THEM RECITE  
2 STRUCTURE.

3 WHAT WE DON'T HAVE IS ANYTHING THAT TELLS US, HOW DO YOU  
4 PARSE A DOCUMENT? WHAT ARE THE RULES THAT YOU USE TO DO THE  
5 ACTUAL PARSING?

6 WHAT WE SEE IN THE PATENT IS WE SAY -- THE '985 PATENT  
7 SAYS "TEXT MAY BE PARSED." IT DOESN'T SAY HOW.

8 IT SAYS "PARSING USING NATURAL LANGUAGE PROCESSING TO  
9 TOKENIZE THE TEXT." WELL, TOKENIZE IT HOW? WHAT KIND OF  
10 NATURAL LANGUAGE PROCESSING? HOW DO YOU BREAK IT UP.

11 WE DON'T SEE IT.

12 AND WHAT WE SAW -- YOU KNOW, WHEN YOU LOOK AT SENTIUS'  
13 TECHNICAL TUTORIAL, I THOUGHT THIS WAS INTERESTING BECAUSE THEY  
14 SAY "A COMMON PARSER, FOR EXAMPLE, LOCATES WHITE-SPACE IN  
15 BETWEEN THE LETTERS WHERE ONE WORD ENDS AND A SECOND BEGINS."

16 ALL RIGHT. IF THIS WERE IN THE PATENT, WE WOULD HAVE A  
17 PARSER, AN ALGORITHM EXPRESSED IN WORDS FOR HOW YOU DO THE  
18 PARSING. WE DON'T. WE DON'T HAVE THIS IN THE PATENT.

19 THE COURT: DOES THE -- I'M SORRY, MR. LAMBERSON --

20 MR. LAMBERSON: YEAH.

21 THE COURT: -- BUT I WANT TO ASK, DOES THE FACT THAT  
22 THERE MAY BE ALL SORTS OF STRUCTURES THAT ARE CAPABLE OF  
23 PERFORMING THE FUNCTION -- LET'S ASSUME I ACCEPT YOUR ARGUMENT  
24 AND WE'RE TALKING ABOUT 112(F) FOR A MOMENT.

25 DOES THE FACT THAT THERE ARE MULTIPLE STRUCTURES AVAILABLE

1 NECESSARILY MEAN THAT THE PATENTEE HAS FAILED TO MEET HIS  
2 OBLIGATION WHERE ONE OF ORDINARY SKILL IN THE ART WOULD  
3 UNDERSTAND THAT ANY OF THESE PARSERS WOULD BE PERFECTLY  
4 ADEQUATE TO THE TASK. I WANT TO MAKE SURE I APPRECIATE WHAT  
5 YOU'RE SAYING.

6 MR. LAMBERSON: YEAH, I THINK -- SO I THINK THE  
7 POINT, YOUR HONOR, IS -- SO IF WE'RE ARGUING IN A WORLD WHERE  
8 112(F) APPLIES, THE QUESTION IS NOT WHAT ONE OF SKILL IN THE  
9 ART WOULD HAVE KNOWN.

10 AND I BELIEVE WE HAVE SOME SLIDES THAT SAY THAT. NOAH  
11 SYSTEMS I BELIEVE IS PERHAPS THE BEST CASE.

12 WE CAN'T CONFUSE ENABLEMENT WITH THE REQUIREMENTS OF  
13 112(6), SO THE QUESTION IS NOT, COULD ONE IMPLEMENT A PARSER?

14 IF YOU ASKED A HUNDRED SOFTWARE ENGINEERS AT THE RELEVANT  
15 TIME --

16 THE COURT: PROBABLY A HUNDRED OF THEM WOULD KNOW HOW  
17 TO PARSE.

18 MR. LAMBERSON: THEY WOULD KNOW ONE WAY TO PARSE,  
19 ABSOLUTELY. THEY COULD IMPLEMENT IT. THEY WOULD PROBABLY DO  
20 WHAT SENTIUS SAID, FIND THE WHITE SPACE.

21 BUT THERE ARE OTHER WAYS TO PARSE. FIRST OF ALL, THAT'S  
22 NOT IN THE PATENT. THAT'S ALL THE PATENTEE HAD TO SAY. IF  
23 WE'RE IN A 112(F) WORLD, TO MEET THE BARGAIN, THE STATUTORY  
24 BARGAIN, ALL THEY HAD TO DO WAS PUT THAT ALGORITHM IN THE SPEC,  
25 ONE SENTENCE, AND THEY DIDN'T DO IT.

1           AND THE TEST THAT NOAH SYSTEMS TELLS US, IT'S NOT WHAT ONE  
2           OF SKILL IN THE ART WOULD HAVE UNDERSTOOD, WOULD HAVE BROUGHT  
3           TO THE TABLE FROM OTHER SOURCES OR THEIR OWN KNOWLEDGE.

4           THE QUESTION IS, DOES THE SPEC TELL YOU HOW TO DO IT?

5           AND IT'S WORTH POINTING OUT, EVEN THAT EXAMPLE THAT  
6           SENTIUS GIVES, YOU KNOW, THAT MAY TELL YOU HOW TO PARSE TEXT  
7           ONLY FILES. WHAT ABOUT FILES THAT HAVE IMAGES OR GRAPHICS OR  
8           SOUNDS?

9           AND THAT ACTUALLY IMPLICATES THE HOLDING IN THE FLYSWAT  
10          CASE WHERE THE COURT SAID, "YOU KNOW WHAT? THERE IS NO  
11          ENABLEMENT HERE BECAUSE YOUR CLAIMS READ ON TO PARSING SOUND  
12          FILES, VIDEO FILES, NO ENABLEMENT OF THAT. THAT'S NOT  
13          SOMETHING ANYONE WOULD KNOW HOW TO DO."

14          SENTIUS NEVER APPEALED THAT JUDGMENT OF INVALIDITY.

15          IN ANY EVENT, WHAT WE HAVE ARE PATENTS THAT JUST DON'T  
16          EXPLAIN HOW YOU DO THE PARSING.

17          THEY DO REFERENCE THE '720 PATENT, SO SENTIUS -- SENTIUS  
18          HAD SAID IN ITS TUTORIAL THAT THIS IS AN INCORPORATION BY  
19          REFERENCE.

20          I DISAGREE. I DON'T -- THERE IS NO STATEMENT HERE THAT,  
21          "THE CONTENTS OF WHICH ARE INCORPORATED BY REFERENCE." IT  
22          SAYS -- YOU KNOW, IT SAYS "TERMS CAN BE TAGGED USING THIS  
23          PATENT," BUT THAT I BELIEVE THE CASE LAW SAYS IS NOT SUFFICIENT  
24          FOR INCORPORATION.

25          BUT LET'S PUT THAT ASIDE. EVEN IF YOU GO LOOK AT THE '720



1 PATENT, WHAT DOES IT SHOW FOR ITS PARSER? IT SHOWS A BLACK  
2 BOX, THAT SAME DISCLOSURE THAT SENTIUS GAVE, YOU KNOW, THIS  
3 COMMON PARSER.

4 IT'S NOT IN THE '720 PATENT, EITHER. THE '720 PATENT JUST  
5 SAYS -- AND IN FACT, THE ONLY -- THE ONLY PARSING, IF YOU COULD  
6 CALL IT THAT, AND I DON'T BELIEVE YOU COULD, BUT THE ONLY THING  
7 THE '720 PATENT DOES DISCLOSE, LET ME SAY IT THIS WAY, IS USING  
8 A VISUAL EDITOR. IT'S AN ACTUAL HUMAN BEING TAKING THEIR MOUSE  
9 AND SELECTING THE WORDS.

10 THE '720 PATENT DOES NOT DISCLOSE PARSING. IT DOESN'T  
11 EVEN DISCLOSE WHAT SENTIUS CALLS A COMMON PARSER. IT SAYS YOU  
12 HAVE TO HAVE A HUMAN BEING DO IT.

13 AND THE COURT IN FLYSWAT NOTED THIS. IT SAID, "THE ONLY  
14 MEANS OF CUTTING IS A VISUAL EDITOR, A METHOD OF AUTO-CUTTING,"  
15 WHICH I WOULD CALL PARSING, AUTOMATICALLY CUTTING THE  
16 DOCUMENT, "IS NOT DEFINED."

17 NOW, THEY SAID ONE OF SKILL IN THE ART COULD BUILD AN AUTO  
18 CUTTER, BUT AGAIN THAT'S NOT THE QUESTION WHEN WE'RE IN THE  
19 112(6) WORLD. IT'S, IS IT IN THERE?

20 AND WHAT WE SEE IS IT'S NOT IN THE '985, AND EVEN IF YOU  
21 WERE TO TRY TO INCORPORATE BY REFERENCE -- AND AS WE'LL SEE IN  
22 THE NEXT LIMITATION, THERE'S AN ADDITIONAL PIECE THERE WHICH  
23 IS -- CASE LAW TELLS US YOU CAN'T LOOK TO THE INCORPORATION BY  
24 REFERENCE FOR THE STRUCTURE.

25 SO EVEN IF YOU LOOK TO THE INCORPORATION BY REFERENCE,

1 EVEN IF LEGALLY THAT WERE PROPER, WHICH IT'S NOT, YOU STILL  
2 DON'T FIND IT.

3 IT'S NOT IN THE '720 PATENT, EITHER.

4 I SUPPOSE -- WELL, THE ONLY THING DISCLOSED IS THE MANUAL  
5 PROCESS AND THAT'S IT.

6 AND I THINK SENTIUS' REPLY, WHEN YOU TAKE A LOOK AT IT,  
7 JUST BEGS THE QUESTION HERE. SENTIUS SAYS "THE PARSING STEPS  
8 INCLUDE SELECTING THE RULES USED TO FIND TERMS OR SPECIFIC  
9 TERMS TO BE MATCHED." THAT'S THE QUESTION AT ISSUE HERE. WHAT  
10 ARE THE RULES? WHAT ARE THE PARSING RULES? THEY CITE TO TWO  
11 PLACES WHERE THEY SAY THOSE ARE DISCLOSED. THE FIRST ONE, 8:51  
12 TO 54, IS HERE. IT DOESN'T SAY ANYTHING ABOUT HOW YOU PARSE AT  
13 ALL.

14 THE SECOND ONE IS LONGER, BUT IT'S THE SAME. YOU KNOW,  
15 WE'VE EXCERPTED IT HERE. YOUR HONOR CAN LOOK AT IT, IT'S 9:23  
16 TO 45. THERE'S NO DISCLOSURE OF WHAT THOSE RULES ARE IN THAT  
17 SECTION.

18 AND THE SECOND PIECE HERE -- SO THAT'S THE PARSING PIECE.  
19 WE DON'T BELIEVE THERE'S ANY DISCLOSURE OF CORRESPONDING  
20 STRUCTURE, WHICH WOULD MEAN THE CLAIMS, IF THEY ARE 112(F) --  
21 IF USING THIS "MODULE FOR" OR "PROCESSOR FOR" LANGUAGE ARE  
22 112(F), THEN WE BELIEVE THEY'RE INVALID. IT'S INDEFINITE IF  
23 YOU DON'T GIVE THE CORRESPONDING STRUCTURE.

24 THE SECOND PIECE IS IDENTIFYING CONTENT, IDENTIFYING  
25 CONTENT. SO THE ONLY EXPLANATION YOUR HONOR HAD TODAY FOR HOW

1 YOU WOULD DO THIS STEP IS FROM THE 7 -- IS FROM THE RE-ISSUED  
2 PATENT. YOU WOULD USE A LOOK-UP TABLE. THAT IS THE ONLY  
3 DISCLOSURE IN ANY OF THESE PATENTS ABOUT HOW YOU DO A LOOK-UP.

4 AND IT'S NOT IN THE '985 OR THE '349 PATENTS. HOW DO YOU  
5 IDENTIFY CONTENT?

6 AND THE OTHER INTERESTING THING HERE, IT MAY BE MORE OF AN  
7 ASIDE, BUT THERE ARE SORT OF TWO IDENTIFYING CONTENT STEPS WHEN  
8 YOU THINK ABOUT IT. THERE'S THE INITIAL PROCESSING BY THE  
9 KNOWLEDGE WORKER, AND THEN THERE'S WHAT I'LL CALL THE, THE -- I  
10 DON'T KNOW HOW TO CHARACTERIZE IT -- THE COMPUTER ON THE OTHER  
11 END THAT'S ALREADY RECEIVED IT AND THAT IS THEN ADDED -- THE  
12 RICHLINK PROCESSOR. WE'LL CALL IT THAT.

13 SO I THINK WE ALL AGREE THAT THIS IS TALKING ABOUT THAT  
14 RICHLINK PROCESSOR IDENTIFYING CONTENT. I DON'T THINK WE'RE  
15 TALKING ABOUT THIS AS BEING THE KNOWLEDGE WORKER'S, YOU KNOW,  
16 MANUALLY ADDING SOMETHING.

17 BUT IF THAT IS THE STRUCTURE, THEN IT MAY BE -- YOU KNOW,  
18 WE CERTAINLY DON'T DO THAT, SO MAYBE THAT'S A FINE STRUCTURE.  
19 BUT I DON'T BELIEVE THAT'S WHAT WE'RE TALKING ABOUT.

20 AND WHAT DOES SENTIUS SAY THIS IS? WELL, THEY SAY, ONCE  
21 AGAIN, YOU KNOW, "LOOKING UP THE TERM IN A LEXICON OBJECT."

22 AGAIN, IT BEGS THE QUESTION, HOW DO YOU DO THE LOOK UP?  
23 WHAT IS THE ALGORITHM YOU USE TO FIND IT? DO YOU USE A LOOK-UP  
24 TABLE? DO YOU USE CASSORLA AND ITS TAGS? DO YOU USE  
25 HYPERLINKS? WHAT DO YOU USE TO FIND IT, TO ACTUALLY FIND THE

1 DATA?

2 AGAIN THEY POINT TO TWO SPOTS. I WOULD NOTE THAT THIS  
3 FIRST ONE, 8:51 TO 54, IS THE SAME PLACE THEY POINTED FOR THE  
4 PARSING. I DON'T THINK IT DISCLOSES EITHER ONE.

5 BUT YOU ALSO HAVE TO HAVE A CLEAR LINKAGE, SO IT'S GOT TO  
6 BE ONE OR THE OTHER. WHICH ONE IS IT LINKED TO? WE DON'T  
7 THINK IT'S RELEVANT TO EITHER ONE.

8 AND THEN THE OTHER PART THEY CITE, WHICH I'VE ALREADY  
9 MENTIONED, IS THIS REFERENCE TO THE '720 PATENT.

10 NOW, IF WE WERE DEALING WITH THIS ISSUE FOR THE '720  
11 PATENT, WE WOULD ABSOLUTELY AGREE THE '720 PATENT DISCLOSES AN  
12 ALGORITHM FOR HOW DO WE DO THIS LOOK UP, AND IT'S THE LOOK-UP  
13 TABLE AND WE'VE ALREADY TALKED ABOUT IT AT GREAT LENGTH TODAY.

14 BUT THE DEFAULT PROOF CASE SAYS EXTERNAL CONTENT  
15 INCORPORATED BY REFERENCE CAN'T BE THE CORRESPONDING STRUCTURE.  
16 IT NEEDS TO BE IN THE BODY OF THE PATENT ITSELF. WE'RE NOT  
17 GOING TO MAKE PEOPLE GO ROOT THROUGH A BUNCH OF EXTERNAL STUFF  
18 TO FIND IT.

19 THE COURT: AND OF COURSE I CAN GO BACK AND READ  
20 DEFAULT PROOF AGAIN, BUT I'M CURIOUS, DO YOU INTERPRET THAT  
21 CASE AS SUGGESTING A PER SE BAN ON SUPPORTING STRUCTURE AND  
22 DOCUMENTS INCORPORATED BY REFERENCE?

23 MR. LAMBERSON: SO, YOUR HONOR, I THINK IT'S AN  
24 INTERESTING QUESTION. YOU KNOW, IF YOU'RE ASKING MY PERSONAL  
25 VIEW, I WOULD SAY IF YOU INCORPORATE SOMETHING BY REFERENCE,

1 YOU SHOULD VIEW THE WHOLE CONTENT AS BECOMING A PART OF THE  
2 PATENT.

3 SO, YOU KNOW, PERSONALLY I WOULD HAVE NO PROBLEM -- NOW, I  
4 DO THINK THERE'S AN ISSUE HERE BECAUSE I DON'T BELIEVE THIS IS  
5 AN INCORPORATION BY REFERENCE, SO I DON'T THINK THAT'S WHAT  
6 THEY'VE DONE.

7 BUT IF THEY HAD, YOU KNOW, PERSONALLY I THINK YOU SHOULD  
8 BE ABLE TO DO THAT.

9 NOW, WHEN YOU READ DEFAULT PROOF, AND WE CAN PULL UP THE  
10 QUOTE, I FIND IT FAIRLY CLEAR THAT THAT IS PROHIBITED -- AND  
11 IT'S THE ONLY CASE WE WERE ABLE TO FIND THAT SPEAKS TO THIS  
12 ISSUE -- AND IT SPECIFICALLY SAYS, I BELIEVE, INCORPORATION BY  
13 REFERENCE AND SAYS WE'RE NOT GOING TO DO THAT.

14 SO, YOU KNOW, MY VIEW IS IT DOESN'T MEAN A WHOLE LOT WHEN  
15 I HAVE A FEDERAL CIRCUIT CASE THAT SAYS THE OPPOSITE.

16 BUT EVEN IF YOUR HONOR WERE TO READ IT AND SAY, "YOU KNOW  
17 WHAT? MY VIEW MATCHES MR. LAMBERSON. FEDERAL CIRCUIT, IT'S  
18 DIFFERENT SOMEHOW," EVEN THEN, THE ONLY STRUCTURE WE SHOULD BE  
19 TALKING ABOUT IS THIS LOOK-UP TABLE.

20 AND I JUST WANT TO BE CLEAR THAT IF WE ARE IN A WORLD  
21 WHERE 112(F) APPLIES, IF THE COURT VIEWS THIS AS INCORPORATION  
22 BY REFERENCE, WHICH WE DON'T THINK IT IS, IF THE COURT  
23 OVERCOMES DEFAULT PROOF, WHICH WE DON'T SEE HOW, BUT MAYBE YOUR  
24 HONOR WILL FIND A WAY, THE ONLY THING YOU GET OUT OF THAT, WE  
25 THINK, IS THE LOOK-UP TABLE, AND THAT SHOULD IMPORT ALL OF THE

1       LIMITATIONS THAT WE TALKED ABOUT EARLIER TODAY, THE LINKING,  
2       THE DATABASE, IT'S ALL OF THAT.

3               AND I JUST WANT TO MAKE CLEAR THAT IF WE DO GET TO THAT  
4       POINT AFTER ALL THOSE STEPS, THAT THAT'S THE ONLY THING WE  
5       COULD BE TALKING ABOUT.

6               NOW, WE DON'T THINK YOU GET THERE. WE THINK THERE IS NO  
7       STRUCTURE, NO INCORPORATION BY REFERENCE. EVEN IF THERE IS,  
8       YOU CAN'T USE IT ACCORDING TO THE FEDERAL CIRCUIT, SO INVALID.  
9       THAT'S OUR POSITION.

10              BUT EVEN IF YOUR HONOR DISAGREED, WE THINK THAT'S THE MOST  
11      YOU WOULD BE ABLE TO FIND FOR STRUCTURE.

12              THE COURT: ALL RIGHT. THANK YOU.

13              ANY REBUTTAL ON THIS POINT, MR. SETH?

14              MR. SETH: JUST A FEW POINTS, YOUR HONOR.

15              CAN WE PUT UP '985, COLUMNS 15 AND 16?

16              ALL RIGHT. CAN WE BLOW IT UP SOME TO GET IN THE VICINITY  
17      OF THE MIDDLE OF THE DOCUMENT, AROUND CLAIM 20? CAN YOU MOVE  
18      OVER? YEAH.

19              SO I'M JUST TRYING TO SHOW SIDE BY SIDE HERE OF CLAIM 36  
20      WHICH USES THE TERM "MODULE LIMITATION," AND CLAIM 20, WHICH  
21      USES A MEANS FOR LIMITATION, AND I WOULD SAY THAT THIS  
22      HIGHLIGHTS THE DIFFERENCES THAT WE HAVE HERE. YOU KNOW,  
23      PRESUMABLY THESE ARE WRITTEN TO HAVE DIFFERENT CLAIM SCOPE.

24              I'M A PATENT ATTORNEY. I SOMETIMES DO THIS BECAUSE I WANT  
25      TO INCORPORATE THE SPECIFICATION LIMITATIONS VERSUS I DON'T.

1 SO -- AND I THINK THAT'S WHAT'S HAPPENED HERE.

2 NOW GOING TO THE SECOND POINT -- CAN YOU GO TO DO THAT  
3 SPLIT SCREEN AT FIGURE 7, AND ALSO COLUMN 6? COLUMN 6 OF THE  
4 TEXT. AND CAN YOU BLOW UP AROUND LINE 52?

5 OKAY. SO MR. LAMBERSON, PUTTING ASIDE THE WHOLE  
6 INCORPORATION BY REFERENCE ARGUMENT, SAYS THAT THERE'S NO  
7 SPECIFICATION SUPPORT FOR THE PARSING.

8 BUT THERE'S A PARSER LISTED AS 710, AND IT'S DESCRIBED IN  
9 COLUMN 6, LINE 58-ISH, YOU KNOW, THAT IT'S "A PARSER USING  
10 NATURAL LANGUAGE PROCESSING TO TOKENIZE THE TEXT INTO  
11 SIGNIFICANT OBJECTS, SUCH AS WORDS AND PHRASES."

12 DO YOU SEE THAT?

13 THE COURT: I SEE.

14 MR. SETH: SO THE POINT IS NOBODY CLAIMS THAT SENTIUS  
15 INVENTED A PARSER. PARSERS WERE KNOWN AND IT WAS A MODULE THAT  
16 WAS USED TO START IDENTIFYING THE WORDS.

17 NOW, WITH REGARD TO THE LINKING RULES, THERE ARE A NUMBER  
18 OF CITATIONS THAT I WANT TO GO THROUGH, BUT I THINK AN  
19 OVERARCHING POINT I WANT TO MAKE ARE THAT THE SPECIFICATION IS  
20 CLEAR THAT IT'S UP TO THE PUBLISHER WHAT LINKING RULES THAT  
21 THEY WANT TO APPLY.

22 AND, AGAIN, THE CLAIMS THAT ARE AT ISSUE IN THIS CASE ARE  
23 OPEN-ENDED AS TO HOW YOU DO THE LINKING. IT IS IMPORTANT THAT  
24 YOU DO LINKING, BUT HOW YOU DO IT IS NOT, NOT RESTRICTED.

25 THE POINT OF THESE CLAIMS IS THAT YOU'RE DOING THE LINKING

1 WITH THE SYNDICATED DATA OBJECTS. THAT'S THE POINT OF THESE  
2 CLAIMS.

3 AND I DON'T KNOW WHAT THE OBJECTION IS THAT MR. LAMBERSON  
4 HAS THAT THERE'S ANOTHER PORTION OF THE INVENTION THAT'S --  
5 THAT WE'RE NOT ASSERTING IN THIS CASE ON HOW THOSE, THOSE  
6 DATABASES ARE GENERATED, BUT THAT'S JUST SIMPLY NOT AT ISSUE IN  
7 THIS CASE.

8 AND THE CLAIMS THAT WE HAVE ARE VERY CLEARLY DIRECTED TO  
9 THE USE OF THE SYNDICATED DATA OBJECTS.

10 SO I JUST WANTED TO CLARIFY THAT.

11 NOW, WOULD YOU LIKE SOME WALK THROUGH FOR SOME OF THE  
12 LINKING RULES THAT ARE GIVEN BY WAY OF EXAMPLE?

13 THE COURT: IF YOU COULD GIVE ME AN EXAMPLE, THAT  
14 WOULD HELP.

15 MR. SETH: SURE.

16 THE COURT: I WOULD APPRECIATE THAT.

17 MR. SETH: CAN WE GO TO COLUMN 2, LINE 15, AND BLOW  
18 THAT UP?

19 THE COURT: I'M SORRY. WHAT LINE -- OR WHAT COLUMN  
20 ARE WE IN?

21 MR. SETH: THIS IS COLUMN 2 NOW OF THE '985 PATENT.  
22 AND WE'RE AT -- HERE WE'RE SETTING UP -- AND I APOLOGIZE, THESE  
23 ARE NOT PRE-PREPARED SLIDES SO I DON'T HAVE THEM HIGHLIGHTED,  
24 BUT THE INFORMATION FROM THE DATABASE NEEDED TO CREATE LINKS  
25 AND THE RULES FOR LINKING TO THE DATABASE CONTENT ARE



1 SYNDICATED TO THE REMOTE SERVERS.

2 WHAT WE'RE SEEING HERE, AGAIN, IS THAT WHATEVER RULES THE  
3 PUBLISHER WANTS TO APPLY ARE PART OF THE CONTENT THAT'S  
4 SYNDICATED TO THE REMOTE PROCESSOR FOR USE --

5 THE COURT: OKAY.

6 MR. SETH: -- BY THE REMOTE PROCESSOR, AND IT'S  
7 OPEN-ENDED AS TO WHAT THOSE RULES COULD BE. I'M GOING TO GIVE  
8 YOU SOME EXAMPLES.

9 AND, AGAIN, WHAT WE'RE DOING HERE IS WE'RE SYNDICATING  
10 THESE RULES ALONG WITH THE EXTERNAL SOURCE CONTENT SO THAT WE  
11 DON'T HAVE TO HAVE A CONNECTION TO THE CENTRAL DATABASE WHEN  
12 WE'RE ACTUALLY PROCESSING THE LINKS.

13 OKAY. CAN WE GO TO 2:40? THAT'S 975, COLUMN 2, LINE 40.

14 AND HERE AGAIN I'M JUST EMPHASIZING THAT THE PUBLISHER IS  
15 SELECTING THE RULES THAT THEY WANT TO APPLY BECAUSE OBVIOUSLY  
16 THERE ARE A NUMBER OF APPLICATIONS YOU MIGHT WANT TO APPLY  
17 VARIOUS RULES TO IN TERMS OF WHEN YOU IDENTIFY A WORD OF  
18 INTEREST, WHAT YOU WANT TO LINK IT TO.

19 ALL RIGHT. 6:62. THAT'S '985, COLUMN 6, LINE 62. HERE  
20 THERE ARE -- SOME EXAMPLE RULES ARE WHETHER OR NOT THE TERM  
21 CURRENTLY EXISTS IN THE DATABASE, WHETHER THERE'S AN UNUSUALLY  
22 HIGH FREQUENCY OF USE, THE TYPE OF TERMS, WHETHER THE TERM IS  
23 USED IN AN UNUSUAL MANNER, AND HERE ARE RULES WHERE WE'RE  
24 IDENTIFYING TERMS OF INTEREST.

25 CAN WE GO TO 9:37? THAT'S '985, COLUMN 9, LINE 37.

1 THE COURT: AND SO, MR. SETH, WOULD YOU AGREE THAT IF  
2 I WERE TO SAY 112(6) OR 112(F) DID APPLY, I WOULD BE OBLIGATED  
3 TO LIMIT THE SUPPORTING STRUCTURE TO THE EXAMPLES THAT YOU'RE  
4 WALKING ME THROUGH HERE? OR --

5 MR. SETH: I THINK --

6 THE COURT: -- DO YOU HAVE A DIFFERENT VIEW?

7 MR. SETH: NO, I THINK I HAVE A DIFFERENT VIEW, AND  
8 THAT IS THAT -- WELL, FIRST, I'M SHOWING THAT THESE ARE BY WAY  
9 OF HOW OPEN-ENDED THE SPECIFICATION IS.

10 THE COURT: I UNDERSTAND.

11 MR. SETH: BUT WHEN WE GO TO THE ACTUAL MODULES THAT  
12 ARE PERFORMING AS THE TERM "MODULE" AND "PROCESSING MODULE,"  
13 WE'LL SEE THAT THERE ARE STEPS THAT ARE, AGAIN, GIVEN. WE'VE  
14 RECITED THOSE STEPS, AND I WILL SHOW YOU A SLIDE REGARDING WHAT  
15 THOSE STEPS ARE WITH REGARD TO EACH OF THOSE MODULES.

16 IF I CAN JUST FINISH THIS, AND I'LL GO RIGHT TO THAT  
17 SLIDE.

18 THE COURT: OF COURSE.

19 MR. SETH: I'M SORRY. ARE WE AT 9:37? YEAH. THIS  
20 IS JUST, AGAIN, RE-EMPHASIZING THAT THE TEMPLATE OBJECT, AS  
21 WELL AS THE LEXICON OBJECTS, ARE USED IN APPLYING THE RULES.

22 AND THEN AT 10:20, THIS IS BY WAY OF HAVING POSSESSION OF  
23 THE INVENTION.

24 OH, THIS IS WHERE WE'RE ACTUALLY CREATING THE TEMPLATES.  
25 ONCE AGAIN, IT'S UP TO THE PUBLISHER AS TO WHAT TEMPLATES

1 THEY'RE GOING TO CREATE AND WHAT RULES THEY WILL DEFINE THAT  
2 THEY'LL THEN SYNDICATE OUT FOR THE USE.

3 OKAY. SO IF WE CAN -- I'LL TAKE CONTROL BACK AT SLIDE 50.

4 AND SOMETIMES THE WHOLE ALGORITHM THING IS WIELDED AS A  
5 WEAPON THAT -- ALMOST TO THE POINT WHERE YOU HAVE TO -- ALMOST  
6 IMPLYING THAT YOU HAVE TO PROVIDE SOURCE CODE OR SOMETHING OF  
7 THAT NATURE, OF THAT SPECIFICITY, AND YOU DON'T. AN ALGORITHM  
8 IS SIMPLY A SERIES OF STEPS THAT YOU'RE DOING TO TEACH ONE OF  
9 ORDINARY SKILL IN THE ART WHO WILL THEN TAKE THAT TEACHING AND  
10 IMPLEMENT IT IN THE MANNER THAT THEY WANT.

11 AND SO WE HAVE A NUMBER OF CASES THAT SUPPORT THE  
12 PROPOSITION THAT, YOU KNOW, YOU'RE NOT TALKING ABOUT SOURCE  
13 CODE HERE.

14 BUT WHAT'S IMPORTANT IS GOING BACK TO THE TEACHINGS OF  
15 THIS PARTICULAR PATENT WITH REGARD TO THESE MODULES, AND WE  
16 THINK THAT IF YOU, IF YOU -- GOING BACK TO THESE SPECIFIC  
17 MODULES, WE'VE RECITED THE PORTIONS OF THE SPECIFICATION THAT  
18 SHOW THAT -- I'M SORRY. I'VE LOST MY PLACE.

19 THIS IS THE PARSING STEP. THIS IS THE PARSING STEP, AND  
20 WE SEE THREE, THREE SORT OF SUBSTEPS, IF YOU WILL, TO THE  
21 PARSING STEP: THAT WE'RE SELECTING THE RULES THAT WE'RE GOING  
22 TO USE TO FIND TERMS OF INTEREST, THAT'S WHAT WE'RE TEACHING;  
23 AND THEN WE'RE GOING THROUGH THE DOCUMENT AND COMPARING THE  
24 WORDS THAT WE HAVE PARSED TO THE RULES TO FIGURE OUT THE ONES  
25 OF INTEREST; AND THEN, IF THERE'S A WORD OR PHRASE THAT MATCHES

1 THE RULE, THEN IT'S TAGGED FOR LINKING.

2 NOW WE'RE GOING TO HAVE TO -- NOW WE'VE IDENTIFIED IT AS A  
3 TERM OF INTEREST AND NOW WE MUST LINK IT TO SOMETHING.

4 AND WITH REGARD TO THE IDENTIFYING STEP, WE NOW HAVE A  
5 TERM OF INTEREST AND WE'RE GOING TO LOOK UP THAT TERM IN THE  
6 LEXICON OBJECT AND THEN WE'RE GOING TO FIND THE CONTENT IN THE  
7 LEXICON OBJECT THAT'S BEEN SYNDICATED TO US THAT'S ASSOCIATED  
8 WITH THAT TERM.

9 SO IT'S PRETTY STRAIGHTFORWARD.

10 THE COURT: ALL RIGHT. THANK YOU.

11 ALL RIGHT. JUST TO REVIEW THE BIDDING BEFORE WE TURN TO  
12 "ORDER OF STEPS," MR. LAMBERSON, I WANT TO MAKE SURE I  
13 UNDERSTAND WHAT IS LEFT. IS THIS THE -- IS THIS REALLY THE  
14 LAST TERM IN DISPUTE?

15 MR. TRIBBLE: IT'S NOT EVEN A TERM. IT'S KIND OF A  
16 CONCEPT.

17 THE COURT: AN ISSUE, YEAH, FAIR ENOUGH. OKAY.

18 MR. TRIBBLE: AND THE -- YOU KNOW, WE -- WE DROPPED  
19 THE PATENT THAT HAD THE RECEIVING CLAIMS BECAUSE THEY -- THOSE  
20 WERE INDUCEMENT CLAIMS, SO, YOU KNOW, THERE WERE OTHER ISSUES  
21 THERE.

22 AND SO I THINK THIS IS ALL WE HAVE LEFT.

23 ON MEANS-PLUS-FUNCTION, OF COURSE -- IF THE COURT WERE TO  
24 FIND THAT ANY OF THOSE TERMS ARE MEANS-PLUS-FUNCTION CLAIMS, OF  
25 COURSE OUR VIEW IS THAT THEY SHOULD BE CONSTRUED ONLY TO

1 REQUIRE THE MINIMUM AMOUNT OF STRUCTURE NECESSARY TO PERFORM  
2 THE FUNCTION.

3 THE COURT: RIGHT.

4 MR. TRIBBLE: AND IT SHOULD REQUIRE THAT OR THEIR  
5 STRUCTURAL EQUIVALENCE.

6 THE COURT: UNDERSTOOD. OKAY. SO LET'S TALK ABOUT  
7 "ORDER." THIS IS AN INTERESTING ONE, TOO.

8 MR. TRIBBLE: YOU KNOW, ALMOST THEY COULD GO FIRST.  
9 I MEAN, IT'S REALLY THEIR ISSUE, BUT I THINK I'LL GO AHEAD AND  
10 PUT OUR ARGUMENT OUT THERE AND THEN WE'LL SEE WHAT THEY'VE GOT.

11 AND SO WE'VE PUT THE STEPS OF CLAIM 8 IN ORDER. I THINK  
12 THEY DID THE SAME THING IN THEIR BRIEF. I THINK OUR -- I DON'T  
13 REMEMBER IF OUR NUMBERS MATCH UP EXACTLY. I THINK THEY SHOULD.

14 AND SO I THINK THEIR CONTENTION IS THAT THE CLAIMS SHOULD  
15 BE CONSTRUED TO REQUIRE ALL THE STEPS IN THIS METHOD CLAIM BE  
16 PERFORMED IN ORDER, AND VERY SIMPLY, OUR VIEW OF IT IS AS TO  
17 SOME OF THE CLAIMS, CLEARLY SOME STEPS HAVE TO BE PERFORMED  
18 BEFORE OTHERS BECAUSE YOU CAN'T, YOU CAN'T USE THE LOOK-UP  
19 TABLE UNTIL YOU CREATE THE LOOK-UP TABLE.

20 THE COURT: YOU CAN'T CUT BEFORE YOU RECORD, FOR  
21 EXAMPLE.

22 MR. TRIBBLE: I'LL GIVE THEM THAT.

23 AS TO THE OTHER CLAIMS, SOME OF THE OTHER CLAIMS CLEARLY  
24 DON'T HAVE ANY SUCH REQUIREMENT AND IT'S NOT LOGICALLY  
25 NECESSARY OR IMPLIED, AND SO GENERALLY THERE SHOULDN'T BE ANY

1       LIMITATION ON THE ORDER OF STEPS. AND IN PARTICULAR, THERE ARE  
2       TWO MAIN SECTIONS, ONE WHICH IS ABOUT CUTTING THE DOCUMENT AND  
3       CREATING ALL THE LINKS, AND THE OTHER IS ABOUT THE DISPLAY  
4       IMAGE.

5               AND IN FACT, IF WE CAN JUST REMIND YOU OF THE PREFERRED  
6       EMBODIMENT, IF WE CAN GO BACK TO THAT FIGURE 1, WHICH I  
7       THINK -- WAS IT SLIDE 8? -- OKAY.

8               THE COURT: THERE WE GO.

9               MR. TRIBBLE: SO HERE'S THE PREFERRED EMBODIMENT AND,  
10       YOU KNOW, THE DISPLAY IMAGE THAT'S BEING DISPLAYED TO THE USER  
11       AND THEN THEY CLICK ON THINGS AND ALL THAT IS DONE DOWN HERE,  
12       OKAY?

13               THE CUTTING IS DONE UP HERE, THE LINKING IS DONE OVER  
14       HERE.

15               I MEAN, THERE'S NO REASON, YOU KNOW, IN THE PREFERRED  
16       EMBODIMENT, ALL THOSE STEPS IN CLAIM 8 -- LET'S GO BACK TO 54.  
17       IN THE PREFERRED EMBODIMENT, IT DESCRIBES THESE STEPS AS BEING  
18       PERFORMED IN THIS ORDER, BUT IT'S JUST THE PREFERRED  
19       EMBODIMENT.

20               AND, YOU KNOW, WE CITE THE CASES THAT UNLESS THE STEPS OF  
21       A METHOD ACTUALLY RECITE IN A WORD, THEY'RE NOT ORDINARILY  
22       REQUIRED TO BE CONSTRUED.

23               AND IT DOES SAY YOU CAN LOOK AT THE LOGICAL IMPLICATIONS  
24       OF THE WORDS IN THE CLAIMS AND SOMETIMES, YOU KNOW, THAT DOES  
25       IMPLY AN ORDER.

1           IN MY OWN VIEW, I'M NOT EVEN SURE IT'S SOMETHING YOU NEED  
2           TO INSTRUCT THE JURY ON.

3           I THINK, UNLESS AT TRIAL SOMEONE IS TRYING TO ARGUE  
4           SOMETHING TRICKY AND IF IT REFERS TO THE TABLE, OKAY, AND  
5           THEY'RE TRYING TO, YOU KNOW -- I THINK YOU KNOW WHAT I'M  
6           SAYING.

7           IN OTHER WORDS, IT DOESN'T SEEM LIKE ANYTHING THAT WOULD  
8           BE NECESSARY FOR A CLAIM CONSTRUCTION OPINION BY THE COURT OR  
9           SOMETHING, BUT WE'RE AT THE COURT'S PLEASURE AND I'M NOT ABOUT  
10          TO TELL YOU WHAT TO DO.

11          WE MAKE THIS STATEMENT, THESE STATEMENTS IN OUR BRIEF, BUT  
12          LET ME EXPLAIN IT.

13          1 THROUGH -- STEPS 1 THROUGH 5, THIS IS THE CUTTING AND  
14          CREATING OF THE LINKS AND EVERYTHING, CREATING THE LINK TABLE.

15          STEPS 6 THROUGH 9, THIS IS DISPLAYING, AND THEN A DISCRETE  
16          PORTION OF THE SOURCE MATERIAL IMAGE IS SELECTED, IT DETERMINES  
17          THE DISPLAY ADDRESS AND CONVERTS THE DISPLAY ADDRESS INTO AN  
18          OFFSET VALUE. THOSE ARE INDEPENDENT FROM THE CREATING, THE  
19          CUTTING OF A DOCUMENT AND EVERYTHING.

20          IN OTHER WORDS, YOU COULD -- IN ANOTHER EMBODIMENT, YOU  
21          COULD CREATE A SOURCE MATERIAL IMAGE DIRECTLY FROM THE ORIGINAL  
22          SOURCE MATERIAL.

23                THE COURT: WITHOUT HAVING TO DO ANY CUTTING AT ALL?

24                MR. TRIBBLE: EXACTLY.

25                THE COURT: RIGHT.

1 MR. TRIBBLE: AND SO THAT'S OUR REAL POINT.

2 AND THEN IN THE BRIEF WE POINT OUT THAT, IN FACT, THERE'S  
3 A CLAIM 11, WHICH IS DEPENDENT OFF OF 10, WHICH IS DEPENDENT  
4 OFF OF 9, AND I DIDN'T PUT ALL THAT UP THERE, BUT I THINK JUST  
5 PUTTING UP 11 MAKES THE POINT THAT IT FURTHER COMPRISES THE  
6 STEPS OF COMPILING THE SOURCE MATERIAL IMAGES FROM AT LEAST THE  
7 PLURALITY OF DISCRETE PIECES AND THEN INDEXING THAT.

8 I MEAN, IT POINTS OUT THAT THE -- IN THAT CLAIM, THE  
9 DISPLAY WOULD HAVE TO COME AFTER THE CUTTING PROCESS, BUT THEY  
10 HAD TO CALL THAT OUT AS A DEPENDENT CLAIM --

11 THE COURT: UM-HUM.

12 MR. TRIBBLE: -- BECAUSE IT'S NOT REQUIRED IN THE  
13 MORE GENERAL INDEPENDENT CLAIMS.

14 THE COURT: ALL RIGHT.

15 MR. TRIBBLE: AND I THINK THAT'S IT.

16 THE COURT: THANK YOU, MR. TRIBBLE.

17 MR. LAMBERSON, YOUR RESPONSE?

18 MR. TRIBBLE: OH, I SHOULD MAKE THE POINT, YOUR  
19 HONOR, THAT BY "INDEPENDENT OF ORDER," WE MEAN IT EITHER COULD  
20 COME BEFORE THE OTHER OR THEY COULD, THE STEPS COULD BE  
21 INTERLEAVED.

22 THE COURT: I SEE. OKAY. THANK YOU.

23 MR. LAMBERSON, GO AHEAD.

24 MR. LAMBERSON: YOUR HONOR, I THINK WE JUST START BY  
25 POINTING OUT THAT THE COURT IN FLYSWAT DID HOLD THAT THE CLAIMS



1 HAD TO BE PERFORMED IN ORDER. THERE WAS NO APPEAL OF THAT.

2 AND WE DO HAVE TO BE AWARE HERE, YOUR HONOR -- WE  
3 MENTIONED IT IN OUR TUTORIAL, AND I DID WANT TO CLARIFY, OUR  
4 STATEMENT OF LAW WAS CORRECT FOR THIS CASE, BUT I DIDN'T WANT  
5 TO LEAVE A WRONG IMPRESSION.

6 YOU DO HAVE A TWO YEAR WINDOW TO BROADEN YOUR CLAIMS  
7 THROUGH RE-ISSUE. AFTER THAT YOU DO NOT. THESE CLAIMS WERE  
8 PROSECUTED AFTER THAT WINDOW, SO IF THEY BROADENED THEIR PATENT  
9 IN ANY WAY FROM WHAT THE '720 -- OR SORRY -- '730 CLAIMED,  
10 INVALID. RE-ISSUED PATENTS ARE INVALID.

11 SO WE HAVE TO BE AWARE OF WHAT THE COURT IN FLYSWAT SAID  
12 AND DID AND WE HAVE TO BE AWARE OF WHETHER THEY CHANGED  
13 ANYTHING TO BROADEN IT DURING THE PROSECUTION. SO THAT'S A  
14 FOUNDATIONAL POINT.

15 I'M NOT GOING TO WALK THROUGH ALL THE STEPS. I THINK WE  
16 CAN CUT TO THE CHASE HERE. THERE'S LOTS OF THINGS THAT SENTIUS  
17 SEEMS TO AGREE DO HAVE TO BE PERFORMED IN ORDER.

18 HERE'S THE ISSUE, YOUR HONOR: THE ISSUE IS SMART TAGS OR  
19 ACTIONS. THERE IS NO -- WE TALKED ABOUT THE TABLE FOR SPELL  
20 CHECK AND GRAMMAR CHECK. THERE'S NO TABLE FOR ACTIONS.  
21 EVERYTHING HAPPENS AFTER YOU CLICK.

22 AND SO THE DISPUTE BETWEEN THE PARTIES REALLY IS, DO THE  
23 PATENTS REQUIRE BUILDING THE TABLE FIRST, GETTING YOUR LINKS  
24 ALL SET UP, AND THEN DISPLAYING THE IMAGE SO SOMEBODY CAN CLICK  
25 ON IT?

1 THE COURT: UM-HUM.

2 MR. LAMBERSON: OR CAN YOU DISPLAY IT, SOMEBODY  
3 CLICKS, AND THEN YOU DO A LOT OF WORK TO BUILD THE LINKS?

4 THE PATENT NEVER DISCLOSED ANYTHING ABOUT HOW THAT LATER  
5 IMPLEMENTATION COULD OR WOULD BE DONE.

6 LET'S REMEMBER THAT THE PATENTS DISCLOSE A PROCESS OF  
7 MANUALLY CUTTING THE SOURCE DOCUMENT. SO HOW, HOW WOULD IT BE  
8 THE CASE THAT YOU'RE GOING TO SHOW THE DOCUMENT DOWN HERE,  
9 SOMEBODY CLICKS SOMEWHERE WHERE THERE IS NO LINK, AND NOW  
10 YOU'RE GOING TO ADD ONE? HOW WOULD THAT WORK IN THE PATENTED  
11 SYSTEM?

12 THERE'S NO DISCLOSURE OF THAT. I DON'T EVEN KNOW HOW TO  
13 EXPLAIN IT.

14 I MEAN, THE WAY THE PATENT WORKS, THE CONSISTENT TEACHING  
15 IN THIS PATENT IS YOU START UP HERE AND THAT'S HOW WE ALL  
16 DESCRIBE IT THROUGHOUT THE DAY. YOU START WITH YOUR SOURCE  
17 FILE, YOU RUN IT THROUGH YOUR VISUAL EDITOR, YOU CREATE, YOU  
18 PICK OUT YOUR WORDS, YOU ADD YOUR LINKS, AND THEN YOU PUBLISH  
19 IT AND YOU MAKE IT SO THAT SOMEBODY CAN THEN LOOK AT IT. AND  
20 THEN -- YOUR LINKS ARE ALREADY IN PLACE AND THEN THEY CAN CLICK  
21 ON THEM.

22 IT JUST DOESN'T MAKE ANY SENSE FOR THESE PATENTS TO SAY,  
23 "WELL, YOU COULD SHOW IT FIRST AND HAVE THEM CLICK AND THEN  
24 WE'LL JUST ADD IN THE LINKS LATER." THE PATENTS DON'T TEACH  
25 YOU HOW TO DO THAT. THEY DON'T -- I MEAN, THAT'S NOTHING

1 THAT'S DISCLOSED.

2 THE COURT: SO IS THAT REALLY THE ISSUE, WHERE THE  
3 LINKING MUST TAKE PLACE? WHAT LINKING --

4 MR. LAMBERSON: THAT'S RIGHT. AND THAT'S REALLY --  
5 WHEN YOU LOOK AT THE CLAIM LANGUAGE, AND SENTIUS' SLIDE MAY  
6 BE --

7 CAN YOU PUT YOUR SLIDE BACK UP?

8 MR. TRIBBLE: WHICH ONE?

9 MR. LAMBERSON: THE ONE WITH THE CLAIMS AND THE  
10 NUMBERS.

11 MR. TRIBBLE: YEAH, 54.

12 MR. LAMBERSON: THEIRS IS PROBABLY BETTER THAN MINE.  
13 THESE STEPS UP HERE, 1 THROUGH 5, ARE ALL, WE ALL AGREE  
14 ARE ABOUT BUILDING THIS LOOK-UP TABLE.

15 AND THEN YOU DISPLAY IT, AND THEN YOU CAN DO YOUR  
16 SELECTION AND REFER BACK TO THAT LOOK-UP TABLE.

17 AND SO IT'S OUR SIMPLE POINT THAT THE PATENTS DON'T TEACH  
18 YOU HOW TO BASICALLY START MIDWAY, START HERE AND THEN AFTER  
19 THE USER HAS CLICKED, THEN YOU ADD THE LINKS. THE PATENTS  
20 DON'T TEACH YOU HOW TO DO THAT.

21 IN FACT, THE PATENTS -- YOU COULDN'T DO IT WITH WHAT'S IN  
22 THE PATENTS BECAUSE THEY'RE USING A VISUAL -- YOU'D NEED TO  
23 SOMEHOW TURN OVER CONTROL OF THE DOCUMENT TO SOMEBODY ELSE WHO  
24 WOULD THEN ADD THE LINK, I SUPPOSE, DO THE PARSING AND ADD THE  
25 LINKS BY HAND, AND THEN YOU NEED TO REPUBLISH IT, THE USER I

1 GUESS WOULD HAVE TO CLICK AGAIN.

2 I DON'T KNOW WHETHER IT COULD BE DONE. MAYBE IT COULD.  
3 BUT IT'S CERTAINLY NOT WHAT THE PATENTS TEACH.

4 AND, YOU KNOW, THIS IS THE MOST CLEAR, I THINK, WHEN YOU  
5 JUST -- COLUMN 7 OF THE PATENT REALLY WALKS YOU THROUGH THIS  
6 PROCESS. YOU START WITH THE CUTTING; THE TEXT IS THEN DIVIDED  
7 INTO WORDS; THEN IT'S LINKED AFTER THE CUTTING; AND THEN AFTER  
8 LINKING IT GETS COMPILED, AND THAT'S WHEN YOU ACTUALLY CREATE  
9 AN IMAGE OF THE TEXT THAT THE USER SEES AND THAT'S WHAT THEY  
10 CAN CLICK.

11 THEY'RE NOT CLICKING ON THE SOURCE -- BY THIS POINT IN THE  
12 PATENT, THE SOURCE DOCUMENT NO LONGER EXISTS. IT'S GONE. IT'S  
13 MAYBE ON DISK SOMEWHERE, BUT YOU'VE ALREADY CUT IT, YOU'VE  
14 TURNED INTO A DATABASE, YOU'VE ADDED LINKS, AND THEN YOU'VE  
15 COMPILED IT, AND THAT'S WHAT THE PATENT TEACHES.

16 AND THE OTHER THING THAT I THINK -- IT'S NOT REALLY FULLY  
17 BROUGHT OUT IN THE BRIEFING, BUT IT'S WORTH KEEPING IN MIND,  
18 AND THIS GOES BACK TO THE BROADENING RE-ISSUE POINT, THESE  
19 CLAIMS ALL ORIGINALLY TALKED ABOUT DISPLAYING AN IMAGE OF THE  
20 SOURCE MATERIAL.

21 THE CLAIMS THAT WERE AT ISSUE IN FLYSWAT TALKED ABOUT  
22 DISPLAYING IMAGES OF THE SOURCE MATERIAL, AND THE PATENT  
23 THERE -- THE COURT THERE IN FLYSWAT SAID THAT IS, THAT IS THIS  
24 COMPILATION PROCESS. YOU'RE BASICALLY CREATING A VIEWABLE  
25 IMAGE OF THE SOURCE THAT HAS YOUR LINKS EMBEDDED.

1           AND THAT'S WHAT THE '720 PATENT WAS ALL ABOUT. IT'S WHAT  
2           THE DISCLOSURE IN THESE PATENTS ARE ALL ABOUT. YOU'RE NOT  
3           DISPLAYING TO THE USER THE ORIGINAL SOURCE BECAUSE THAT HAS NO  
4           LINKS. IT'S NOT IN YOUR DATABASE. YOU'RE DISPLAYING THIS  
5           VIEWABLE COMPILED VERSION OF IT.

6           AND WHAT SENTIUS DID IN PROSECUTION WAS TO TAKE OUT THE  
7           WORDS "SOURCE MATERIAL IMAGE." THEY JUST CHANGED IT TO "SOURCE  
8           MATERIAL," "DISPLAY THE SOURCE MATERIAL."

9           YOU KNOW, IF WE LOOK AT CLAIM 8, THE ACTUAL RE-ISSUED  
10          PATENT WHICH SHOWS THE ADDITIONS AND DELETIONS, IT USED TO BE  
11          UP FRONT, "SOURCE MATERIAL IMAGE." THEY ACTUALLY CUT THE WORD  
12          "IMAGE."

13          SO TO THE EXTENT WE'RE NOW GOING TO SAY WHAT THIS CLAIM IS  
14          REALLY TALKING ABOUT IS NO LONGER DISPLAYING THE COMPILED IMAGE  
15          OF THE SOURCE MATERIAL, BUT IT'S JUST DISPLAYING THE ORIGINAL  
16          SOURCE MATERIAL AND THEN YOU CLICK ON THAT, THEN, YOUR HONOR, I  
17          THINK WE DO HAVE A BROADENING IN THE RE-ISSUE AND I THINK WE  
18          HAVE TO SAY THAT THIS CLAIM, AND ANY OTHER CLAIM THAT WE'RE  
19          GOING TO READ THAT WAY, IS INVALID.

20          I MEAN, WE CAN DO SEPARATE BRIEFING ON IT, BUT I THINK  
21          THOSE ARE THE TWO CHOICES. EITHER, EITHER THE SPEC MEANS WHAT  
22          IT SAYS AND YOU'RE DISPLAYING A VERSION OF THE DOCUMENT WITH  
23          THE LINKS ALREADY INSERTED, OR WE SAY THEY'VE CHANGED THEIR  
24          CLAIMS AND THAT'S NO LONGER REQUIRED AND THEN WE HAVE A  
25          BROADENING RE-ISSUED. I THINK THOSE ARE THE ONLY TWO OPTIONS

1       HERE.

2               THE COURT:   ALL RIGHT.   I APPRECIATE THE ARGUMENT.

3       THANK YOU.

4               MR. TRIBBLE:   CAN YOU LEAVE THAT UP?

5               MR. LAMBERSON:   YEAH, SURE.   THERE MIGHT BE WORK  
6       PRODUCT ON OTHER PAGES.

7               MR. TRIBBLE:   I'M NOT GOING TO CHANGE THE PAGE.

8               IT'S NOT A BROADENING RE-ISSUE, YOUR HONOR.   THE PARTS IN  
9       ITALICS ARE ADDED.   WE ADDED THE BIG LINKING STEP.   OKAY?   IT'S  
10      NARROWER.   IT'S A DIFFERENT CLAIM.

11              WHEN JUDGE ARMSTRONG MADE HER RULING IN THE FLYSWAT CASE,  
12      SHE MADE HER RULING BECAUSE THE OLD CLAIM, THE '720 CLAIM, HAD  
13      SOME WEIRD LANGUAGE WHERE THERE WAS AN ANTECEDENT REFERENCE,  
14      OKAY, AND SO IT MADE THE CLAIM KIND OF NONSENSE, AND THAT WAS  
15      FIXED IN THE RE-ISSUE.   IT'S NOT A BROADENING RE-ISSUE.

16              AGAIN TODAY, I KEEP GETTING THESE ARGUMENTS OF YOU HAVE TO  
17      CONSTRUE IT THIS WAY BECAUSE OTHERWISE IT'LL BE INVALID.

18              LET'S CONSTRUE THE CLAIM THE WAY IT SHOULD BE CONSTRUED  
19      AND WE'LL WORK ON DECIDING INVALIDITY ANOTHER DAY WHEN WE HAVE  
20      A FAIR CHANCE TO FIGHT THE ARGUMENT.

21              OKAY.   LET'S GO TO 54.

22              SO JUST WALKING THROUGH IT -- LET'S GO TO 62.   AND THIS  
23      APPLIES TO EVERYTHING WE'VE GONE THROUGH TODAY, OKAY?   I KNOW  
24      YOU KNOW THE LAW, YOU KNOW IT A LOT BETTER THAN I DO, BUT  
25      JUST -- I THINK THE KEY POINTS APPLICABLE TODAY, OKAY, IN

1        PHILLIPS, THEY REMIND US THAT IT IS THE CLAIMS OF THE PATENT  
2        THAT DEFINE THE INVENTION, AND THE CLAIMS ARE OF PRIMARY  
3        IMPORTANCE.

4                AND, OF COURSE, IT'S IMPROPER TO READ LIMITATIONS FROM THE  
5        PREFERRED EMBODIMENT, EVEN IF IT'S THE ONLY EMBODIMENT, AND  
6        THIS CITES THE AMERICAN MEDICAL SYSTEMS CASE.

7                BUT IN PHILLIPS, REMEMBER WHAT THE ISSUE WAS, OKAY? I  
8        DON'T KNOW IF YOU'VE LOOKED AT THESE DIAGRAMS LATELY.

9                THE COURT: IT'S BEEN SOME TIME, MR. TRIBBLE, BUT I  
10       DO RECALL THEM, YEAH.

11               MR. TRIBBLE: OKAY. IN THE DISTRICT COURT CASE, THE  
12       CLAIMS USED THE TERM "BAFFLES," THESE WERE THESE BAFFLES  
13       THAT -- IT SAID THAT ONE PURPOSE OF THE INVENTION WAS TO  
14       MINIMIZE RICOCHETS.

15               AND SO THE BAFFLES THAT WERE DISCLOSED, THEY ONLY HAD ONE  
16       EMBODIMENT -- JUST LIKE THE PATENT IN THIS CASE -- THERE WAS  
17       ONLY ONE EMBODIMENT AND IT -- IT NEVER DISCLOSED BAFFLES THAT  
18       WERE PERPENDICULAR BECAUSE THAT WOULDN'T MINIMIZE RICOCHETS.  
19       IT WOULDN'T SERVE THAT STATED PURPOSE, ONE OF THE PURPOSES OF  
20       THE INVENTION.

21               AND SO THE COURT CONSTRUED THE TERM "BAFFLES" AS ANGLES  
22       OTHER THAN PERPENDICULAR, OTHER THAN 90 PERCENT, 90 DEGREES, IN  
23       PART BECAUSE THE SOLE EMBODIMENT SHOWED IT OTHERWISE, AND IT  
24       WAS A STATED PURPOSE THAT WOULDN'T BE SERVED BY 90 DEGREE  
25       BAFFLES.

1 THE FEDERAL CIRCUIT SAID -- THEY REVERSED. BAFFLES IS NOT  
2 LIMITED TO THE PREFERRED EMBODIMENT. IT'S NOT LIMITED TO  
3 ANGLES OTHER THAN 90 DEGREES. DON'T READ THE PREFERRED  
4 EMBODIMENT OF THE CLAIMS, AND THEY SAID "WE'VE EXPRESSLY  
5 REJECTED THE CONTENTION THAT IF A PATENT DESCRIBES ONLY A  
6 SINGLE EMBODIMENT, THE CLAIMS OF THE PATENT MUST BE CONSTRUED  
7 AS BEING LIMITED TO THAT EMBODIMENT."

8 AND SO LET'S GO BACK TO 54.

9 AND SO THAT, THAT HAS BEEN A LOT OF THE ARGUMENT AGAINST  
10 THE SENTIUS CONSTRUCTIONS TODAY ON ALL OF THE TERMS, AND  
11 INCLUDING THIS ONE.

12 IN OTHER WORDS, THE WALK THROUGH -- THEY PUT UP FIGURE 1  
13 AND THEY GO, WELL, THERE'S A VISUAL EDITOR WHERE THE CUTTING  
14 COMES AND THEN THAT'S THE IMAGE THAT'S DISPLAYED, AND SO HOW --  
15 THIS STEP MUST FOLLOW ALL OF THAT.

16 BUT THAT'S -- LET'S DO WHAT THE FEDERAL CIRCUIT SAYS.  
17 LET'S START WITH THE CLAIM, AND THE CLAIM -- AND THERE'S THAT  
18 CASE THAT SAYS THE CLAIM IS THE NAME OF THE GAME, OKAY -- BUT  
19 STEP TWO -- RATS -- YOU KNOW, CUTTING.

20 IT DOESN'T SAY THERE'S A VISUAL EDITOR WITH SOMEBODY  
21 SITTING AT IT MANUALLY CUTTING THIS. IT JUST SAYS THERE'S  
22 CUTTING. OKAY? A PERSON OF ORDINARY SKILL IS GOING TO KNOW  
23 THAT IF YOU HAVE A TEXT FILE, YOU CAN CUT IT INTO A BUNCH OF  
24 WORDS OR YOU CAN CUT IT INTO SENTENCES AND YOU CAN CUT IT ANY  
25 NUMBER OF WAYS TO CREATE THESE PIECES. SO IT HAS TO BE CUT.



1 AND THEN IT DOES ALL THE LINKING AND EVERYTHING.

2 BUT LOOK AT THE DISPLAY, DISPLAY AN IMAGE. IT DOESN'T  
3 SAY -- THE STATEMENT WAS MADE -- THIS WAS -- IT SAYS IT'S  
4 DISPLAYING THE LINKED IMAGE OR SOMETHING.

5 THIS HAS NOTHING TO DO WITH LINKING. IT'S JUST DISPLAYING  
6 AN IMAGE OF THE SOURCE MATERIAL, YOU KNOW, AND THERE ARE ANY  
7 NUMBER OF WAYS IT COULD GET THAT IMAGE.

8 AND THEN IT'S SELECTING A PIECE OF THAT, DETERMINING A  
9 DISPLAY ADDRESS, AND THEN CONVERTING THE DISPLAY ADDRESS TO --  
10 OF THE SELECTED DISCRETE PORTION TO AN OFFSET VALUE FROM THE  
11 BEGINNING OF THE POSITION ADDRESS.

12 YOU KNOW, IN OTHER WORDS, YOU KNOW, THE ARGUMENT I HEARD  
13 WAS TWO-FOLD. THERE WAS THE BROADENING RE-ISSUE ARGUMENT  
14 WHICH, YOU KNOW, I JUST THINK IT'S INCORRECT, BUT AT ANY RATE,  
15 I DON'T THINK IT'S SOMETHING TO BE CONSIDERED TODAY.

16 I HEARD ANOTHER APPEAL TO YET ANOTHER PART OF THE ACCUSED  
17 PRODUCTS, AND IT'S BLACK LETTER LAW THAT YOU DON'T CONSTRUE THE  
18 CLAIMS WITH REGARD TO THE ACCUSED PRODUCTS. YOU GIVE THE CLAIM  
19 TERMS THEIR PLAIN AND ORDINARY MEANING.

20 YOU KNOW, THIS DOESN'T SAY THEY HAVE TO BE DONE IN ORDER.  
21 THE CLAIMS, EXCEPT FOR CERTAIN CIRCUMSTANCES WHERE YOU CAN'T  
22 USE A LINKED TABLE UNTIL YOU CREATE IT, WE AGREE WITH THAT.

23 BUT THE DISPLAY PART IS INDEPENDENT OF THE CUTTING AND  
24 LINKING PART AND THOSE CAN BE INTERLEAVED OR DONE IN EITHER/OR  
25 AND, YOU KNOW, OBVIOUSLY AT THE END OF THE DAY YOU'RE

1       DISPLAYING THE EXTERNAL REFERENCE MATERIAL.

2               BUT IT ALL STILL MAKES SENSE GIVING THE CLAIMS, YOU KNOW,  
3       A PLAIN AND ORDINARY READING.

4               THE COURT:   ALL RIGHT.

5               MR. TRIBBLE:   THANK YOU.

6               THE COURT:   THANK YOU VERY MUCH.

7               ALL RIGHT.   I THINK I HAVE THE ARGUMENTS IN HAND.

8               LET ME GIVE YOU SOME GUIDANCE ON HOW I WOULD LIKE TO  
9       PROCEED.

10              IT'S MY -- AS I MAY HAVE MENTIONED TO YOU AT OUR LAST  
11       GATHERING, IT'S MY NORMAL PRACTICE TO ISSUE THE CONSTRUCTIONS  
12       AT THE CONCLUSION OF THE HEARING.   IN THIS PARTICULAR INSTANCE,  
13       YOU ALL HAVE RAISED ONE OR TWO ISSUES THAT GIVE ME SOME PAUSE,  
14       PERHAPS A COUPLE MORE.

15              NEVERTHELESS, I DO WANT TO GET YOU YOUR CONSTRUCTIONS  
16       WITHOUT ANY UNNECESSARY DELAY.

17              HERE'S HOW I WOULD PROPOSE TO PROCEED:   THERE'S BEEN GOOD  
18       ARGUMENT.   I WANT TO GO BACK AND READ A COUPLE OF THE CASES YOU  
19       CITE ME TO, YOU CITE TO ME, AND ALSO REVIEW A COUPLE OF  
20       PORTIONS OF THE INTRINSIC RECORD.

21              I WILL GET YOU CONSTRUCTIONS VERY QUICKLY, HOPEFULLY IN A  
22       MATTER OF A COUPLE DAYS AT THE OUTSET.

23              AND WHAT I WOULD PROPOSE IS THOSE CONSTRUCTIONS WILL NOT  
24       HAVE MY FULL MULTI-PAGE ANALYSIS THAT WILL COME IN DUE COURSE,  
25       BUT I THINK IT'S IMPORTANT TO KEEP YOUR CASE MOVING AND I DON'T

1 WANT MY DELAY TO BE A PROBLEM FOR YOU. SO WHAT I WILL DO IS I  
2 WILL ISSUE THE CONSTRUCTIONS -- A FULL OPINION WILL COME, YOU  
3 DON'T HAVE TO WORRY ABOUT THAT -- BUT THAT WAY YOU'LL HAVE  
4 SOMETHING TO WORK WITH, YOUR EXPERTS WILL BE HAPPY, AND MAYBE  
5 YOU'LL EVEN HAVE A FURTHER CONVERSATION.

6 SO UNLESS THERE'S ANY OBJECTION, I'D LIKE TO PROCEED ON  
7 THAT BASIS.

8 DOES THAT WORK FOR YOU?

9 MR. TRIBBLE: NO OBJECTION, YOUR HONOR. HAS ANYONE  
10 EVER OBJECTED TO THAT?

11 THE COURT: NOT YET, MR. TRIBBLE, BUT I'M WAITING.

12 (LAUGHTER.)

13 MR. LAMBERSON: THAT'S FINE, YOUR HONOR.

14 THE COURT: ALL RIGHT. I DID ENJOY THE ARGUMENTS  
15 TODAY. I'LL GET MY ORDER OUT VERY QUICKLY, AND I WISH YOU ALL  
16 SAFE TRAVELS HOME.

17 MR. TRIBBLE: THANK YOU, YOUR HONOR.

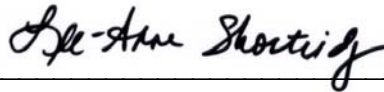
18 MR. LAMBERSON: THANK YOU, YOUR HONOR.

19 (THE PROCEEDINGS WERE CONCLUDED AT 1:14 P.M.)  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: FEBRUARY 21, 2014